



The Judiciary, State of Hawai‘i

Testimony to the House Committee Finance

Representative Sylvia Luke, Chair
Representative Ty J. K. Cullen, Vice Chair

Friday, March 29, 2019 3:30 PM – Agenda #3
State Capitol, Conference Room 308

WRITTEN TESTIMONY ONLY

by
Judge Shirley M. Kawamura
Deputy Chief Judge, Criminal Administrative Judge
Circuit Court of the First Circuit
Reporter, HCR 134 Criminal Pretrial Task Force

Bill No. and Title: Senate Bill No. 192, S.D. 1, H.D. 2, Relating to Bail.

Purpose: Implements recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017. Authorizes a defendant in custody to petition a court for unsecured bail. (SB192 HD2).

Judiciary's Position:

The Judiciary respectfully supports Senate Bill No. 192, S.D. 1, H.D. 2, in as much as it reflects the recommendations of the H.C.R. 134, H.D. 1 (2017) Criminal Pretrial Task Force submitted to this Legislature on December 14, 2018.

I. In support, the Judiciary provides the following additional comments:

1. Regarding Section 5, relating to Unsecured Bail: The Judiciary continues (as stated in prior testimony this session) to believe that unsecured bonds may be unnecessary, but does not oppose this section and appreciates the House Committee on Judiciary's amendment to paragraph (b). To restate prior testimony, this section may be unnecessary because defendants eligible for supervised release are already released without any financial obligation. Non-financial release alternatives are already utilized. Defendants can be released on their own recognizance, on supervised release to the Department of Public Safety's Intake Service Center,



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on supervised release to a sponsor (often a family member or friend with a stable residence), or on supervised release to a treatment program. Because non-financial release alternatives are already available, there is little need for unsecured bonds. Nevertheless, the Judiciary does not oppose this section.

2. The Judiciary also notes what is *not* included in S.B. 192, S.D. 1, H.D. 2. Notably, it appears that two sections in particular from H.B. 1289, H.D. 2 (Relating to Criminal Pretrial Reform)¹ that appear to have raised concerns among one or more law enforcement or other agencies or community groups have been omitted. These omissions (Section 5² relating to law enforcement discretion for citation in lieu of arrest and Section 7 relating to a right to a prompt hearing on release or detention and release on own recognizance for non-violent offenders with exceptions where bail may be set in a reasonable amount) may be related to apparent concerns expressed in testimony by one or more testifiers.

Even without these provisions, this bill will make meaningful statutory revisions that can supplement improvements to practices that do not require statutory amendments. As a result, the Judiciary acknowledges the House Committee on Judiciary's responsiveness.

3. Consistent with the above, and focusing on the goal of enacting meaningful statutory revisions, the Judiciary acknowledges that several agencies would also appear to have concerns with section 6 (establishing a rebuttable presumption for release or admitted to bail under the least restrictive conditions) of S.B. 192, S.D. 1, H.D. 2. Specifically, the Judiciary notes that section 6 of S.B. 192, S.D. 1, H.D. 2 is a duplicate of section 8 of H. B. 1289, H.D. 2, and the latter appears to have raised concerns in testimony before the Senate Committee on Public Safety, Intergovernmental, and Military Affairs by one or more testifiers.

Although section 6 reflects the recommendations of the Criminal Pretrial Task Force, nevertheless, even if this section is deleted, the bill will achieve significant reform.

4. The Judiciary also notes that the Department of Public Safety has expressed concern with adequate funding and resources, considering that it will be responsible for implementing several aspects of this bill. Consistent with recommendation #3 of the Task Force, the Judiciary understands the need that adequate funding and resources be provided for these purposes as contemplated in sections 17 and 22.

¹ The Judiciary testified in support of H.B. 1289, H.D.2 in as much as it reflects the recommendations of the Criminal Pretrial Task Force. Similarly, the Judiciary has testified in support of S.B.1422 and S.B.1539, both of which relate to the same subject matter of these two sections omitted from S.B. 192, S.D. 1, H.D. 2.

² Section numbers in this sentence refer to H.B. 1289, H.D.2.



II. In support, the Judiciary also provides the following background on the Criminal Pretrial Task Force and its recommendations.

Chief Justice Mark E. Recktenwald established the instant Criminal Pretrial Practices Task Force to examine and recommend legislation to reform Hawai'i's criminal pretrial system.

The Task Force embarked on its yearlong journey in August 2017 and began with an in-depth study of the history of bail and the three major generations of American bail reform of the 1960s, 1980s, and the last decade. The Task Force researched the legal framework underlying our current practices, which are firmly rooted in our most basic constitutional principles of presumption of innocence, due process, equal protection, the right to counsel, the right to confrontation and that in America, liberty is the norm and detention is the very limited exception. National experts were invited and the Task Force members delved into the latest research and evidence-based principles and learned from other jurisdictions where pretrial reforms are well underway. Previous studies conducted in the State of Hawai'i were reviewed, community experts were engaged and the views of our local stakeholders were considered. Task Force members visited cellblocks, jails, ISC offices and arraignment courts in an effort to investigate and present an unbridled view of our criminal pretrial process.

The recommendations in the report seek to improve current practices, with the goal of achieving a more just and fair pretrial release and detention system, maximizing defendants' release, court appearance and protecting community safety. With these goals in mind, the Task Force respectfully submitted the following recommendations to be considered and implemented as a whole:

1. Reinforce that law enforcement officers have discretion to issue citations, in lieu of arrest, for low level offenses and broaden discretion to include non-violent Class C felonies.

For low-risk defendants who have not demonstrated a risk of non-appearance in court or a risk of recidivism, officers should issue citations rather than arrest.

2. Expand diversion initiatives to prevent the arrest of low-risk defendants.

Many low-risk defendants have systematic concerns (homelessness, substance abuse, mental health, etc.) which lead to their contact with law enforcement. Diversion initiatives allow law enforcement to connect such defendants with community social service agencies in lieu of arrest and detention. This allows defendants to seek help and address their concerns, reducing their future risk of recidivism. Initiatives such as the Honolulu Police Department's Health, Efficiency, Long-Term Partnerships (HELP) Program and Law Enforcement Assisted Diversion (LEAD) Program, as well as initiatives such as Community Outreach Court (COC) should be expanded.



3. Provide adequate funding, resources and access to the Department of Public Safety, Intake Service Center.

At the heart of Hawai‘i’s pretrial process is the Intake Service Center (ISC), a division of the Department of Public Safety (DPS). ISC is tasked with two primary responsibilities. First, ISC helps the court determine which pretrial defendants should be released and detained. More specifically, ISC conducts a risk assessment of the defendant to evaluate his/her risk of nonappearance and recidivism. The results of the risk assessment are reported to the court via a bail report, which recommends whether the defendant be held or released.

Second, once a defendant is released, ISC provides pretrial services to supervise the defendant and monitor his/her adherence to any terms and conditions of release. Pretrial services minimize the risk of nonappearance at court hearings while maximizing public safety by supervising defendants in the community.

Though Hawai‘i benefits from a dedicated and centralized pretrial services agency, staff shortages and limited funding hinders the administration of essential functions. ISC should be consulted to prepare an estimate of resources required to comply with current demand, as well as any potential future demands which may be triggered by any recommendations herein.

4. Expand attorney access to defendants to protect defendant’s right to counsel.

Attorneys need access to clients to discuss matters of bail, case preparation and disposition. Inmate-attorney visiting hours and phone calls from county jails should be expanded to protect defendant’s right to counsel.

5. Ensure a meaningful opportunity to address bail at the defendant’s initial court appearance.

A high functioning pretrial system requires that release and detention decisions be made early in the pretrial process, at the defendant’s initial court appearance. Prior to the initial appearance, parties must be provided with sufficient information (risk assessments and bail reports) to meaningfully address a defendant’s risk of non-appearance, risk of recidivism and ability to pay bail. Adequate funding and resources must be provided to the ISC, courts, prosecutors and public defenders to ensure that such information is accessible to all parties and ensure that low risk defendants are released and high risk defendants are detained.

6. Where bail reports are received after the defendant’s initial appearance, courts should automatically address pretrial detention or release.

In the event that a bail report is not provided for use at defendant’s initial court appearance, especially when the bail report recommends release, courts should set an expedited bail hearing without requiring a filed, written motion.



7. Establish a court hearing reminder system for all pretrial defendants released from custody.

To decrease the number of defendants that fail to appear in court, a court hearing reminder system should be implemented. Each defendant who has been released from custody should receive an automated text message alert, email notification, telephone call or other similar reminder of the next court date and time.

8. Implement and expand alternatives to pretrial detention.

The Task Force recommends broadening alternatives to pretrial detention in two primary ways. First, home detention and electronic monitoring should be used as an alternative to incarceration for those who lack the finances for release on bail. Second, the use of residential and treatment programs should be expanded. Many low-risk defendants may be charged with crimes related to their inability to manage their lives because of substance abuse, mental health conditions, or homelessness. Rather than face incarceration, defendants should be afforded the opportunity to obtain services and housing while awaiting trial. Providing a structured environment to address any potential criminogenic factors reduces the defendant's risk for non-appearance and recidivism.

9. Regularly review the jail population to identify pretrial defendants who may be appropriate for pretrial release or supervision.

Generally, court determinations as to whether a defendant is detained or released are made at or about the time of the initial arraignment hearing. Thereafter, there is no systematic review of the pretrial jail population to reassess whether a defendant may be appropriate for release. Absent a court appearance or the filing of a bail motion, there is no current mechanism in place to potentially identify low-risk defendant who may safely be released pretrial. In order to afford the pretrial detainee greater and continuing opportunities to be released, ISC should conduct periodic reviews to reassess whether a detainee should remain in custody.

10. Conduct risk-assessments and prepare bail reports within two (2) working days of the defendant's admission to a county correctional center.

Currently, ISC is required to conduct risk assessments within three (3) working days. There is no correlating time requirement for bail reports. Following a felony defendant's arrest, defendants charged by way of complaint are brought to preliminary hearing within two (2) days of defendant's initial appearance. Thus, requiring both risk assessments **and** bail reports to be completed in two (2), rather than three (3), days would enable bail to be addressed at the earliest phases of the pretrial process, including at felony preliminary hearings. The current three (3) day requirement forgoes this opportunity to address bail early on.



11. Inquire and report on the defendant's financial circumstances.

Federal courts have held that a defendant's financial circumstances must be considered prior to ordering bail and detention. Hawai'i statute also instructs all officers setting bail to "consider [not only] the punishment to be inflicted on conviction, [but also] the pecuniary circumstances of the party accused." At present, little, if any, inquiry is made concerning the defendant's financial circumstances. Courts must be provided with and consider the defendant's financial circumstances when addressing bail.

12. Evaluate the defendant's risk of violence.

Currently, the risk assessment tool used in Hawai'i does not evaluate the defendant's risk of violence. While risk of non-appearance and recidivism remain critical components to an informed decision concerning pretrial release or detention, it is imperative that any evidence-based assessment also take into account whether the defendant is a danger to a complainant or the community.

13. Integrate victim rights by considering a victim's concerns when making pretrial release recommendations.

The perspective of victims should be integrated into the pretrial system by requiring that ISC consider victims' concerns when making pretrial release recommendations. While ISC is mindful of the victim's concerns and does make efforts to gather this information (generally from the prosecutor's office) and report it to the court, an effective and safe pretrial system must actively provide victims with a consistent and meaningful opportunity to provide input concerning release or detention decisions. Balance and fairness dictate that the defendant's history of involvement with the victim, the current status of their relationship, and any prior criminal history of the defendant should be better integrated into the decision-making process.

14. Include the fully executed pretrial risk assessment as part of the bail report.

ISC and correctional center staff who administer the risk assessment tool often employ overrides that frequently result in recommendations to detain. Furthermore, the precise reasons for these overrides are generally not provided. To increase transparency and clarity, ISC should provide to judges and counsel, as part of the bail report, the completed risk assessment, including the score and written explanations of any overrides applied.

15. Periodically review and further validate the risk-assessment tool and publicly report any findings.

In 2012, Hawai'i began using a validated risk-assessment tool, the Ohio Risk Assessment System Pretrial Assessment Tool ("ORAS-PAT"), which had been validated in Ohio in 2009 and in Hawai'i in 2014. Pre-trial risk assessments, including the ORAS-PAT, are designed to provide an objective assessment of a defendant's likelihood of failure to appear or reoffend upon



pre-trial release. Regular validation of the ORAS-PAT is vital to ensure Hawai'i is using a reliable tool and process. This validation study should be done at least every five years and findings should be publicly reported.

16. Provide consistent and comprehensive judicial education.

A high-functioning pretrial system requires judges educated with the latest pretrial research, evidence-based principles and best practices. Release and detention decisions must be based on objective risk assessments used by judges trained to systematically evaluate such information. Judges must be regularly informed of reforms implemented in other jurisdictions and embrace the progression toward a fairer system which maximizes the release of low-risk defendants, but also keeps the community safe.

17. Monetary bail must be set in reasonable amounts, on a case-by-case basis, considering the defendant's financial circumstances.

Federal case law mandates that monetary bail be set in reasonable amounts based upon all available information, including the defendant's financial circumstances. Hawai'i statutes already instruct officers setting bail to "consider . . . the pecuniary circumstances of the party accused." This recommendation makes clear that information regarding a defendant's financial circumstances, when available, is to be considered in the setting of bail.

18. Permit monetary bail to be posted with the police or county correctional center at any time.

Defendants should be able to post bail and be released on a 24 hours, 7 days a week basis. Defendants should not be detained simply because of an administrative barrier requiring that bail or bond be payable only during normal business days/hours. Further, reliable forms of payment, beyond cash or bond, should be considered.

19. Require prompt bail hearings.

The current system is inconsistent as to whether and when a pretrial defendant is afforded a bail hearing. This recommendation would establish a new provision requiring defendants who are formally charged with a criminal offense and detained be afforded a prompt hearing to address bail.

20. Eliminate the use of money bail for low level, non-violent misdemeanor offenses.

The use of monetary bail should be eliminated and defendants should be released on their own recognizance for traffic offenses, violations, non-violent petty misdemeanor and non-violent misdemeanor offenses with certain exceptions. Many jurisdictions across the nation have shifted away from money bail systems and have instead adopted risk-based systems. Defendants are



released based on the risks they present for non-appearance and recidivism, rather than their financial circumstances. At least for lower level offenses, the Task Force recommends a shift away from money bail.

21. Create rebuttable presumptions regarding both release and detention.

This recommendation would create rebuttable presumptions regarding both release and detention and specify circumstances in which they apply. Creating presumptions for release and detention will provide a framework within which many low-risk defendants will be released, while those who pose significant risks of non-appearance, re-offending and violence will be detained.

22. Require release under the least restrictive conditions to assure the defendant's appearance and protection of the public.

Courts, when setting conditions of release, must set the least restrictive conditions required to assure the purpose of bail: (1) to assure the defendant's appearance at court and (2) to protect the public. By requiring conditions of release to be the least restrictive, we ensure that these true purposes of bail are met. Moreover, pretrial defendants, who are presumed innocent, should not face "over-conditioning" by the imposition of unnecessary and burdensome conditions.

23. Create a permanently funded Criminal Justice Institute, a research institute dedicated to examining all aspects of the criminal justice system.

Data regarding pretrial decisions and outcomes is limited. Collecting such data and developing metrics requires deep understanding of the interactions of the various agencies in the system. A Criminal Justice Research Institute should be created under the office of the Chief Justice. The Institute should collect data to monitor the overall functioning of the criminal justice system, monitor evidence-based practices, conduct cost benefit analysis on various areas of operation and monitor national trends in criminal justice. The Institute should further develop outcome measures to determine if various reforms, including those set forth herein, are making positive contributions to the efficiency of the criminal justice system and the safety of the community.

24. A centralized statewide criminal pretrial justice data reporting and collection system should be created.

As part of our obligations pursuant to HCR No. 134, this Task Force is required to "[i]dentify and define best practices metrics to measure the relative effectiveness of the criminal pretrial system, and establish ongoing procedures to take such measurements at appropriate intervals." This Task Force recommends that a centralized statewide criminal pretrial justice data reporting and collection system be created. A systematic approach to gathering and analyzing data across every phase of our pretrial system is necessary to assess whether reforms,



suggested by this group or others, are effective in improving the quality of pretrial justice in Hawai‘i.

25. Deference is given to the HCR 85 Task Force regarding the future of a jail facility on O‘ahu.

House Concurrent Resolution No. 85 (2016), requested that the Chief Justice establish a task force, now chaired by Hawai‘i Supreme Court Associate Justice Michael Wilson, to study effective incarceration policies (HCR 85 Task Force). Our Task Force was directed to consult with the HCR 85 Task Force and “make recommendations regarding the future of a jail facility on O‘ahu and best practices for pretrial release”. Reforms to the criminal pretrial system will have a direct impact upon the size and needs of the pretrial population, as well as the design and capacity of any future jail facility. This Task Force respectfully defers to the HCR 85 Task Force regarding the future of a jail facility on O‘ahu.

Each recommendation put forward by the Task Force came as a result of an extensive critical review and examination of each phase of our criminal pretrial system to identify strengths, weaknesses and missed opportunities which have prevented our system, thus far, from doing a better job of not only meaningfully protecting an individual arrestee's rights, but also in a way which makes our communities much safer. Notably, despite the marked differences of opinion and concerns expressed by our diverse group of criminal justice stakeholders, our members nonetheless were able to set aside their differences and work together toward the common goal of improving the quality of pretrial justice in Hawai‘i. This slate of recommendations represent a set of measured, practical and achievable reforms to our present pretrial system. The fact that each recommendation garnered broad consensus speaks volumes with respect to the careful thought and effort that the Task Force brought to this endeavor.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 192, S.D. 1, H.D. 2, RELATING TO BAIL.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Friday, March 29, 2019

TIME: 3:30 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Clare E. Connors, Attorney General, or
Michelle M.L. Puu, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but has concerns.

The original purpose of this bill was to (1) authorize a defendant in custody to petition a court for unsecured bail and (2) require the court to take appropriate steps to collect the amount of an unsecured financial bond in the event that a defendant fails to appear or breaches any other condition of release. The Department did not submit testimony on this version of the bill as it did not present any legal concerns. This portion has been placed in section 5 (page 8, line 15, to page 10, line 21).

This latest draft has incorporated the wording from H.B. No. 1289. The Department did submit concerns with portions of that bill.

The purpose of this newly added language is to implement certain recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017.

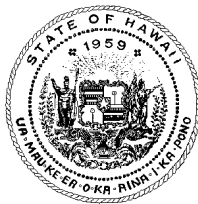
Section 6 (page 11, lines 4-21, and page 12, lines 11-15) seeks to create a rebuttable presumption for release for all offenses with the exception of Murder, Attempted Murder, Class A felonies, and B and C felonies involving violence or threats of violence. This places the burden on the prosecution to establish, via an evidentiary hearing, that individuals charged with offenses such as Habitually Operating a Vehicle Under the Influence of an Intoxicant, Burglary, Criminal Property Damage, felony Theft,

car theft, Forgery, Fraud, Bribery, Computer Crimes, Credit Card offenses, Money Laundering, Arson, Cruelty to Animals, Violation of Privacy, Gambling, Promoting Pornography, and various drug offenses should not be automatically released from custody. For example, an individual accused of Burglary in the First Degree (i.e., breaking into a residence to commit a crime therein) will be entitled to automatic release unless the prosecution provides contrary evidence by a clear and convincing standard.

Section 13 (page 22, line 9, to page 23, line 3) seeks to place the responsibility on the community correctional centers to conduct periodic reviews of detainees to evaluate whether each detainee should remain in custody or whether new information warrants reconsideration of the detainee's status. This responsibility, however, should reside with the detainee's counsel who is in the best position to know whether a change in circumstances warrants reconsideration.

We suggest that the recommendations of the Task Force be allowed to be implemented, and the criminal justice system be afforded ample time to evaluate the impact of these changes to the law before presumptions favoring automatic release are imposed.

Based upon the above concerns, we respectfully request that this bill be amended by deleting section 6 (page 11, lines 4-21, and page 12, lines 11-15) and section 13 (page 22, line 9, to page 23, line 3). Thank you for the opportunity to comment.



STATE OF HAWAII
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TESTIMONY ON SENATE BILL 192,
SENATE DRAFT 1, HOUSE DRAFT 2
RELATING TO BAIL.

by

Nolan P. Espinda, Director
Department of Public Safety

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Cullen, Vice Chair

Thursday, March 29, 2019; 3:30 p.m.
State Capitol, Conference Room 308

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Public Safety Department (PSD) supports Senate Bill (HB) 192, Senate Draft (SD) 1, House Draft (HD) 2, which incorporates key recommendations of the House Concurrent Resolution No. 134 (2017), Criminal Pretrial Task Force. PSD offers the following suggestions to help ensure that sufficient resources are provided to successfully meet the objectives underlying the Task Force recommendations.

The new language in Part II, Section 3, referencing Section 353-10(3) and (9), requiring a risk assessment and bail report to be completed within two days of admission to a community correctional center, will significantly overtax existing PSD staff and require additional resources, including, but not limited to, funds for staffing, office space, and equipment. PSD provides a conservative estimate for a suggested appropriation in Part V, Sections 17 and Part VII, Section 22 of this measure.

The Department respectfully suggests adding language in Part II, Section 3, Section 353-10(8), specifying the State agencies with the relevant financial

data systems that PSD's pretrial services officers will need to access. PSD recommends the following amendment:

“... provided limited access for the purpose of viewing the Department of Labor and Industrial Relations' and the Department of Taxation's data system(s) related to an offender's employment history including wages and financial tax information;”

In addition, PSD respectfully requests that the language in Part II, Section 3, page 5, lines 1-3, related to considering a specific risk of violence or harm to any person or the general public be deleted, as its enactment would be premature, given PSD's recent contracting for a new validation study of PSD's version of the Ohio Risk Assessment System's Pretrial Assessment Tool (ORAS-PAT) for the Hawaii pretrial offender population. Any changes to the pretrial risk assessment prior to the completion of the validation study would be counter-productive. It should be noted that the risk of violence or harm is incorporated into PSD's version of the ORAS-PAT and its procedures.

In order to ensure the timeline requirements established by Part II, Section 3, Section 353-10(9), the Department respectfully recommends that the following language be added after “bail report” on page 6, line 18:

“A copy of the pretrial bail report shall be electronically filed by the Department of Public Safety staff utilizing the Judiciary Electronic Filing and Service System (JEFS) to ensure timely access by the prosecuting attorney, offender or offender's defense counsel, and the courts.”

In the interest of balancing the rights of the offender and a “victim's right”, the Department would also recommend that Part III, Section 6, pages 11 and 12, be amended to reflect an evidentiary standard of “preponderance of the evidence.” This will ensure the “victim rights” objective of Part VI and expand the protections to the prosecution, who is charged with ensuring justice for the victim and our community.

PSD reiterates its previous concerns with similar language in this and other measures as found in Part III, Section 9, Section 804-7, which requires that

an individual be able to post bail 24 hours a day, 7 days a week at a community correctional center. The fact remains that the Department has neither the staff, expertise, nor safe and secure monetary handling resources to implement the requirements of Section 21. PSD recommends deleting any reference to the posting of bail at a community correctional center.

PSD also suggests adding language to Part IV, Section 13, Section 353-__ (b) to ensure that the required notification to the court, prosecuting attorney, and defense counsel may be fulfilled by correspondence, as follows:

“(b) For each review conducted pursuant to subsection (a), the relevant community correctional center shall transmit its findings and recommendation by correspondence to the appropriate court, prosecuting attorney, and defense counsel.”

The Department appreciates the recognition of the substantial additional costs and resources that will be required in instituting the bail reform objectives, focused on evaluating whether or not to detain an offender or releasing an offender on the least restrictive non-financial conditions, with the inclusion of budgetary appropriations in Part V, Sections 17 and Part VII, Section 22. Therefore, the Department respectfully requests in Section 17, the sum of \$750,000 for fiscal year 2019-2020, to be continued in subsequent fiscal years, for the purpose of procuring service contracts, as referenced in (1) to (5). PSD respectfully requests the following appropriation for Section 22 in fiscal year 2019-2020 and in subsequent fiscal years, while considering any future cost increases:

| | | |
|---|------|-------------|
| Social Worker/Human Service Professional V | (1) | \$ 64,476 |
| Social Worker/Human Service Professional IV | (20) | \$1,146,480 |
| Office Asst. IV | (2) | \$ 73,464 |
| Working Differential | (23) | \$ 46,000 |
| Fringe Benefits | | \$ 663,668 |
| Moving Expenses | | \$ 15,000 |
| Office Equipment | | \$ 176,820 |
| Office Space Lease (2 locations) | | \$ 65,000 |
| Office Furniture | | \$ 60,000 |
| Training Expense and Travel | | \$ 20,000 |

PSD appreciates the considerations provided in Part VI, which are focused on victims' rights consideration. The Department requests that language be added to Section 19 as follows:

"The relevant county or state law enforcement entity, who initiated the individual's arrest shall provide to the PSD Intake Service Center for their jurisdiction a copy of the complete police report within twenty-four (24) hours of arrest, including the alleged victim's statement and contact information."

This will ensure that the Intake Service Center has the victim's contact information to incorporate the victim's concerns into the bail report and risk assessment tool.

The Department welcomes these comprehensive changes to the criminal pretrial procedures, which we believe will assist in reducing the offender populations within the community correctional centers.

Thank you for the opportunity to present this testimony.



Office of the Public Defender State of Hawai'i



Testimony of the Office of the Public Defender, State of Hawai'i to the House Committee on Finance

Prepared by William C. Bagasol, Supervising Deputy Public Defender

March 27, 2019

SB192, SD1, HD2: RELATING TO BAIL

Chair Sylvia Luke, Vice Chair Ty J.K. Cullen and Members of the Committee:

The Office of the Public Defender **supports** passage of SB 192, SD1, HD2.

The Office of the Public Defendant supports the work of the Criminal Pretrial Task Force. This legislation incorporates many of the published recommendations in the Criminal Pretrial Task Force report to the 30th Legislature. The specific proposals in SB 192, SD1, HD2 are measured and modest. They will go a long way in improving the fairness and efficiency of the pretrial system while addressing the concerns for public safety.

The Office further supports this measure allowing for unsecured bond as part of an efficient and fair pretrial system. Unsecured bond offers some relief and gives the Court another option or tool for assuring a defendant's appearance in court while allowing release of individual that should not otherwise be incarcerated. Furthermore, this method adds more responsibility on the Defendant and persons that may assist the defendant in appearing in court. Moreover, the bill now clarifies specific steps to be taken in the event of non-appearance.

We encourage the passage of this legislation Thank you for the opportunity to comment on SB 192, SD1, HD2.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty Cullen, Vice Chair

Friday, March 29, 2019

3:30 pm

Room 308

SUPPORT w/ SUGGESTIONS - SB 192 SD1, HD2 - PRETRIAL REFORM RECS & UNSECURED BAIL

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Since this bill has been amended to include the HCR 134 Pretrial Task Force recommendations and subsumed the original intent of SB 192, we will start with our overall comments and suggestions.

- Pretrial **risk assessments should be validated annually**, not "at least every 5 years"
- **Remove the word "offender"** throughout this measure and **replace with person or individual**. These people are innocent until proven guilty and purposely stigmatizing people does not promote fairness or justice. Labels hurt.
- Please specify that **prompt bail hearings should occur within 48 hours**, not "within 5 days of arrest"
- Clarify that **the purpose of bail is to ensure that the person reappears in court**. Until a person has been convicted of a crime, s/he should be treated just like any other member of society whenever possible
- If public safety is included, **it should be clearly stated that the person poses a specific threat to an identifiable person**, not "any person or the community"
- **Ensure that the director of the proposed criminal justice research institute is not a current or former employee of the department of public safety.**

Hawai'i needs to eliminate our two-tiered justice system based on a person's financial status. It is obvious that those with money can be released, but those who are struggling are imprisoned. We are happy that the task force recommendations take financial hardships into consideration.

THE PURPOSE OF BAIL

**THE PURPOSE OF BAIL IS TO ENSURE THAT AN INDIVIDUAL
RETURNS FOR FUTURE COURT APPEARANCES.**

BAIL SHOULD NOT BE USED AS PUNISHMENT.

SECTION 5 – UNSECURED BAIL

Community Alliance on Prisons strongly supports the original intent of SB 193 – unsecured bail - releasing people who present no flight risk. An unsecured bond is a commitment/promissory note signed by the person who agrees to reappear before the court. If s/he fails to do so, s/he promises to pay the agreed bail bond amount. **Let's remember that these individuals are innocent until proven guilty.**

Hawai'i's bail system has created a debtor's prison in defiance of the Hawai'i Constitution:

Article 1.19 Imprisonment for debt
There shall be no imprisonment for debt.

[Ren Const Con 1978 and election Nov 7, 1978]

Section 5 complements the HCR 134 Task Force and gives the court another tool -- the option to allow certain defendants to secure their release by signing a promissory note for all or part of their bail amount.

Community Alliance on Prisons implores the committee and the legislature to remember the purpose of bail and not the hyperbole and speculation of the prosecutors and their allies.

Mahalo for this opportunity to share our thoughts and make suggestions to create a more fair and just system for Hawai'i's people.



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

COMMITTEE ON FINANCE
FRIDAY, March 29, 2019, 3:30 p.m. Room 308.

SB 192, SD1. HD2 RELATING TO BAIL
TESTIMONY

Laurie Tomchak, Legislative Committee, League of Women Voters of Hawaii

Chair Luke, Vice-Chair Cullen and Committee Members:

The League of Women Voters Supports SB192 SD1, HD2 which authorizes a defendant in custody to petition a court for unsecured bail if securing the bail bond would result in significant financial hardship; and continued incarceration would jeopardize the defendant's ability to maintain employment, remain enrolled in any educational or training program, care for a dependent, continue medical or therapeutic treatment, or maintain housing.

The bail system is a little like the board game Monopoly. After you have been charged with a misdemeanor or felony, the judge may give you a card that sends you to jail: do not pass go, do not collect two hundred dollars. If you are a poor defendant, that is what you get. Or you can be given a get out of jail card. The roll of the dice that made you wealthy will give you the means to pay bail or get a bail bond. You do not have to rely on an overworked public defender and can work on your defense more easily. Whether you are innocent or guilty, you will get your bail or bond money back, less "court costs."

Those who end up staying in jail because they can't pay thousands of dollars for bail or hundreds for bail bond may stay locked up for weeks or even months, depending on how long their cases take to come to trial. In that time, they are unable to work (and thus may lose their jobs) or otherwise earn money to pay rent or mortgages, support their children or keep up with their bills.

Another negative consequence of this system is that the people who are in jail pretrial may be innocent. They may have trouble resuming daily life after the court and prisons let them go. They may even plead guilty just for that get out of jail Monopoly card that can enable them to go back to work and family. The prosecutor may pressure them to make a guilty plea, even when it is not in their interest.



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If bail is taken out of the picture, rich and poor defendants are on a more level playing field (it will never be completely level). The prison system will not be so crowded and instead of relying on private prisons or building more jails, money can go into systems like pretrial supervised release.

Thank you for letting us testify on this important criminal justice issue, and please make the bill effective once it has passed.

SB-192-HD-2

Submitted on: 3/28/2019 9:38:06 AM

Testimony for FIN on 3/29/2019 3:30:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------|--|--------------------|--------------------|
| Lorenn Walker | Hawai'i Friends of Restorative Justice | Support | No |

Comments:

Dear Honorable Committee Members,

Mahalo for your public service.

This bill is vital for helping to reduce Hawai'i's mass incarceration problem. We support this important measure, but please amend it to reflect:

- Pretrial risk assessments should be validated annually, not “at least every 5 years”
- Remove the word “offender” throughout this measure and replace with person or individual who is innocent until proven guilty
- Please specify that prompt bail hearings should occur within 48 hours, not “within 5 days of arrest”
- Clarify that the purpose of bail is to ensure that the person reappears in court
- If public safety is included, it should be clearly stated that the person poses a specific threat to an identifiable person, not “any person or the community”
- Ensure that the director of the proposed criminal justice research institute is not a current or former employee of the department of public safety

Our non-profit organization was incorporated in 1981 to improve the justice system. We have a long history of assisting people harmed by crime and wrongdoing along with developing rehabilitation processes for people who have caused harm. Our work is published in books and over 40 academic articles and is replicated in other states and countries.

Please contact me if you have any questions about our support for this desperately needed bail reform and improving Hawai'i's criminal justice system, which costs over \$200 million a year for incarcerating people.

Aloha, Lorenn Walker, Director, Hawai'i Friends of Restorative Justice

SB-192-HD-2

Submitted on: 3/27/2019 11:39:09 PM

Testimony for FIN on 3/29/2019 3:30:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---|--------------------|--------------------|
| Michael Golojuch Jr | LGBT Caucus of the Democratic Party of Hawaii | Support | Yes |

Comments:

Aloha Representatives,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of SB 192 HD2.

Our current bail system has turned our jails into a debtor's prisons. This is unacceptable to the LGBT Caucus. This proposed change will allow the judicial system to view people as people. It will help with the over crowding while protecting society from violent offenders.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.
Chair
LGBT Caucus of the Democratic Party of Hawaii



**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
March 29, 2019
Re: SB 192 SD1 HD2 Relating to Bail**

Good afternoon Chairperson Luke members of the House Committee on Finance. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) as founded in 1901 and is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

While we understand the intent, RMH is strongly opposed to SB 192 SD1 HD2 Relating to Bail. This measure implements recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017. Authorizes a defendant in custody to petition a court for unsecured bail.

It is our understanding that the Pre-Trial Criminal Task Force did NOT include any victims of crimes but only judicial, lawyers, law enforcement, OHA /advocacy group representing those incarcerated. **We are very concerned as this bill essentially gives those who have been arrested for a non-violent crime like shoplifting, drug dealing, home invasions, car theft and break ins, prostitution to name a few to be caught and released without much consequence or an assurance they will in fact show up for court. It's a big win for the offenders especially career criminals and an even bigger loss for anyone in the community who is a victim of a crime including our co-workers, family, friends and neighbors.**

Retailers have a major concerns on this measure.

- **Without any additional resources or appropriations included in this bill is it NOT realistic that internal pretrial risk assessments on adult offenders can be conducted within two working days of admission to a community correctional center.** We think not and would allow offenders to be released on this technicality. In prior years it was 5 days then cut down to the current 3 days. And even at 3 days it is a race to get the information completed.
- The offender's financial circumstances for those arrested for crimes like theft or drugs will not accurate. **Financial gains from stolen property or from selling drugs is unreported income that is not taxed and normally NOT deposited in a bank account.** For organized retail criminals stealing is their daily job.



- **Unsecured bail portion of this bill does NOT include any reporting or supervision. So basically the offender is caught and released and within hours can be back in our stores stealing.** And if the offender claims to not have any financial resources and does not appear for their court date or violates condition of their release, how is the court going to collect that unsecured bond? **The court should at least be allowed to increase or revoke the bail. Again there is no real consequence to those offenders of non-violent crimes including career criminals.**

In 2016 the legislature raised the felony theft charge from \$300 to \$750. Since then, many retailers have been facing an upward increase in theft – from designer clothing to hand bags to sunglasses to electronics to spam to cosmetics to liquor to tobacco to name a few. While some thieves steal right under \$750 many go above and beyond. **The thieves are part of organized retail crime and come into the stores daily with a list of items, like your grocery list, of things that they are going to steal. They consider stealing from our stores their daily job.**

It is a losing battle for many retailers where the police may or may not catch and arrest the thieves. When HPD does arrests them and lets them go after being processed, the thieves are right back into the stores stealing again. Then it is the prosecutors who may or may not prosecute them regardless of the number of priors they have. IF they don't prosecute, the thieves are right back in the stores stealing. If we are lucky to get a prosecution, the judges often let the thieves off easy with a slap on the wrist as it is a non-violent crime and within hours the thieves are back in the stores stealing again. **Bills like this give criminals the green light to do nonviolent illegal activities as there are no real consequences for their actions only a slap on the wrist.**

Although these crimes are not violent, they are still crimes and the victims are not just the retailers but the community as well. There is only so much a retailer can absorb before we have to raise the prices of items to cover the loss. And there is a limit on how much we can raise our prices to remain competitive and in business. **When we raise our prices the cost of living in Hawaii also increases. The alternative we have is to let go hard working law abiding employees or close our doors for good.**

If you can't afford the crime – don't do the crime. We urge you to hold this measure. Mahalo again for this opportunity to testify.

SB-192-HD-2

Submitted on: 3/28/2019 12:20:19 PM

Testimony for FIN on 3/29/2019 3:30:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------|--------------|--------------------|--------------------|
| Neil Ishida | ABC Stores | Oppose | No |

Comments:

ABC Stores opposes SB 192, SD1, HD2 Relating to Bail. The Pre-Trial Criminal Task Force did NOT include any victims of crimes – only judicial, lawyers, law enforcement, OHA and advocacy groups representing friends and family of those in prison. This bill would allow all those who are arrested for nonviolent crimes like shoplifting, drug dealing, home invasions, car theft and break ins, prostitution to be released on unsecured bail with no reporting or check in. Offenders who are caught would be released without much consequence or an assurance they will in fact show up for court. It's a big win for the offenders especially career criminals and an even bigger loss for anyone in the community who is victim of a crime including our co-workers, family, friends and neighbors. We urge you to hold this measure. Thank you fro this opportunity to testify.

SB-192-HD-2

Submitted on: 3/27/2019 1:36:15 PM

Testimony for FIN on 3/29/2019 3:30:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-----------------|--------------|--------------------|--------------------|
| Christine Weger | Individual | Support | No |

Comments:

Aloha, please consider:

(1) Your own commissions report that our overcrowded jails are due largely to the fact that we have an unusually high rate of pre-trial detention. Any costs associated with altering the bail system will be more than compensated for by a reduced jail population.

(2) Plans for a new jail call for a massive infusion of tax dollars--a public/private partnership is NOT the answer. Private prison companies have a woeful record of poor services. and high costs. The answer has been made crystal clear by the Task Force Report.

(2) Any money bail system disproportionately jails the poor. Incarceration, even for a short period, often results in the loss of employment and financial disaster for the family--a domino effect that only increases poverty and crime -- and its cost to our State.

(3) The Legislature was right to study criminal justice/bail reform--but WHY be hesitant to implement the recommendations of your own Task Force which has studied all aspects of this problem?

Mahalo for your good work,

Christine Weger, Attorney at Law

SB-192-HD-2

Submitted on: 3/27/2019 5:52:31 PM

Testimony for FIN on 3/29/2019 3:30:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------|--------------|--------------------|--------------------|
| Diana Bethel | Individual | Support | No |

Comments:

SB 192 SD1 HD2 allows a defendant to petition for unsecured bail based on a number of factors assessed by a judge.

Unsecured bail ensures that poor defendants are not disadvantaged by their weak financial status.

Pre-trial incarceration has been shown to increase guilty pleas because defendants who cannot post bail often plead guilty in order to return quickly to their daily lives to take care of their families, keep a job and housing, etc.

Also, pre-trial incarceration often leads to the detainee going to prison, simply because they are already behind bars, as if "time served" in pre-trial detention was deserved and an indication of guilt, even though, pre-trial, they are supposed to be presumed innocent. This is not fair.

If unsecured bail becomes an implemented policy, it will reduce the pre-trial population and help ease prison overcrowding. A reduction in inmates being held unnecessarily will eliminate the need to buy or build a large prison that does not meet the needs of Hawaii's incarcerated population.

State resources would be better spent on developing diversion, rehabilitation, and reentry programs as recommended by the HCR 85 Task Force. This will ultimately lead to greater public safety.

Please pass SB 192 SD1 HD2.

Mahalo.

SB-192-HD-2

Submitted on: 3/28/2019 8:41:19 AM

Testimony for FIN on 3/29/2019 3:30:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|-------------------------------|-------------------------------|
| Jen Jenkins | Individual | Support | Yes |

Comments:

March 28 ,2019

**SUPPORT FOR SB192 SD1 HD2—Unsecured Bail
with Recommendation for technical amendment**

TO: Chair Sylvia Luke, Vice Chair Ty Cullen and
Members of the House Committee on Finance

FROM: Barbara Polk

Thank you for hearing this bill, and for considering the technical amendment I have suggested below.

I support SB192 because it allows for prompt bail hearings, reduction or elimination of cash bail amounts for those who cannot afford it, and the ability to pay bail 24 hours a day/seven days a week. Because a person who is awaiting trial is considered innocent until tried and found guilty, it is not appropriate to completely disrupt the life and well being of someone who is no risk to society and may be innocent.

Recommended Technical Amendment: In Section 3, please replace the word “offender” when used for a person who has not been tried and found guilty, since it assumes guilt. Throughout the rest of the bill and current law, the person is referred to as the “defendant” or simply as a person.

Please support SB192 SD1 SD2.

SB-192-HD-2

Submitted on: 3/28/2019 4:04:54 PM

Testimony for FIN on 3/29/2019 3:30:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------|--------------|--------------------|--------------------|
| William Caron | Individual | Support | No |

Comments:

Aloha Chair Luke,

I strongly support reforms to our criminal pre-trial system, including the complete abolition of cash bail, which is a failed policy that fails to accomplish its goal of protecting the public and ensuring court appearances while simultaneously violating constitutional rights and exacerbating our mass incarceration problem by extrajudicially punishing poor people. While SB192 does not go nearly far enough in pursuit of the elimination of this harmful policy, it is a start. Our incarceration facilities are so overcrowded that they have become a liability for the state. Recent riots in a Maui facility by pretrial detainees highlights the urgency of reform. And yet, almost every single pretrial reform bill this session has been either watered down or killed altogether. This is deeply disappointing, and shows the legislature's priorities are not in the right place when it comes to criminal justice reform, generally. Please make sure that this modest reform measure passes so that we can at least begin the journey toward meaningful reform. Mahalo.

From: Lucas Morgan <lucas.morgan@gmail.com>
Sent: Thursday, March 28, 2019 4:10 PM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

I strongly SUPPORT SB192 SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly. I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families. I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system. For these reasons, I humbly request that you PASS SB192 SD1, HD2 out of your committee.

Aloha no,
Lucas Morgan, PhD

LATE

From: Mark Vascincellos <mark.vasconcellos85@gmail.com>
Sent: Thursday, March 28, 2019 6:58 PM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

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Sent from my iPhone

LATE

From: Jayna Weatherwax <jlweatherwax808@gmail.com>
Sent: Thursday, March 28, 2019 6:22 PM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

I strongly SUPPORT SB192 SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly. I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families. I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system. For these reasons, I humbly request that you PASS SB192 SD1, HD2 out of your committee.

--

Sent from Gmail Mobile

LATE

From: Kathleen Papalimu <kikpapalimu@yahoo.com>
Sent: Thursday, March 28, 2019 4:44 PM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

I strongly SUPPORT SB192 SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly. I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families. I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system. For these reasons, I humbly request that you PASS SB192 SD1, HD2 out of your committee.

LATE

From: Lisa Barroga <lbarroga@gmail.com>
Sent: Thursday, March 28, 2019 4:35 PM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2

I strongly SUPPORT SB192, SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly.

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For these reasons, I humbly request that you PASS SB192, SD1, HD2 out of your committee.

Please do the right thing!

Lisa Barroga

LATE

From: Tanya Dreizin <tdreizin@my.hpu.edu>
Sent: Thursday, March 28, 2019 4:32 PM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee,

I strongly **SUPPORT** SB192, SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly.

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For these reasons, I humbly request that you **PASS** SB192, SD1, HD2 out of your committee.

Thank you,

Tanya Dreizin

LATE

From: Healani Sonoda-Pale <healanipale@gmail.com>
Sent: Thursday, March 28, 2019 4:45 PM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

I strongly SUPPORT SB192 SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly. I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families. I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system. For these reasons, I humbly request that you PASS SB192 SD1, HD2 out of your committee.

LATE

From: Amelia <aborofsky@gmail.com>
Sent: Thursday, March 28, 2019 4:28 PM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

I strongly SUPPORT SB192 SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly. I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families. I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system. For these reasons, I humbly request that you PASS SB192 SD1, HD2 out of your committee.

Sent from my iPhone

LATE

From: John Kalahui Rosa <jhawaiian808@gmail.com>
Sent: Thursday, March 28, 2019 4:28 PM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

I strongly SUPPORT SB192 SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly. I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families. I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system. For these reasons, I humbly request that you PASS SB192 SD1, HD2 out of your committee.

LATE

From: Shannon Bucasas <s.bucasas@seariders.k12.hi.us>
Sent: Thursday, March 28, 2019 8:16 PM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

I strongly SUPPORT SB192 SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly. I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety,%2

LATE

From: MICHELLE DREWYER <Drewyers@hawaii.rr.com>
Sent: Thursday, March 28, 2019 7:19 PM
To: FINtestimony
Subject: PASSSB192, SD1,HD2

My name is Michelle Drewyer. I have worked as a prosecutor, public defender, private counsel and as a per diem judge in both family court and district court. I fully support this bill. I urge you to vote to pass it. I see the unfairness of the current bail system everyday.

I strongly **SUPPORT** SB192, SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly.

I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families.

I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system.

For these reasons, I humbly request that you **PASS**SB192, SD1,HD2 out of your committee.

From: Wendy Hudson <wendyHUDSONlaw@gmail.com>
Sent: Thursday, March 28, 2019 4:26 PM
To: FINtestimony
Subject: I Support SB192 SD1 HD2 Relating to Bail

I am a criminal defense attorney in private practice after nearly 19 years as a Public Defender. WE NEED this bill to pass because we need BAIL REFORM *now!*

I strongly SUPPORT SB192 SD1, HD2 because the current bail system totally punishes the indigent before they even get their day in court. Most take deals and cop to things they didn't do because they get offered to be released as part of a deal, instead of waiting for trial.

Sitting in custody because they can't afford their bail means they lose their job if they had one, they lose their housing if they had a place, their cars get towed and impounded, and their families suffer because they aren't around. If you have means, you simply bail out and then you fight your case. If you're poor, you sit in custody and lose everything.

The uprising at MCCC this month is a direct result of overcrowding. The jail is overcrowded because bails are too high and don't take into consideration the defendant's financial situation. Our own constitution says in Article 1, Section 12: "Excessive bail shall not be required..."

The current trend across America is towards Bail Reform. This is because it has been unfair for decades at the expense of the indigent. The indigent are still somebody's mom or dad, son or daughter, husband or wife, cousin, aunty, uncle or employee. Let's correct this problem in Hawaii NOW!

Mahalo,
Wendy Hudson

Please pass this bill and reform our current bail system.



LATE

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Date: March 29, 2019

To: The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
House Committee on Finance

From: Justin Murakami, Manager, Prevention Education and Public Policy
The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

RE: Comments on S.B. 192 S.D. 1 H.D. 2
Relating to Bail

The Sex Abuse Treatment Center (SATC) respectfully submits comments on S.B. 192 S.D. 1 H.D. 2, sharing our concerns that some provisions may harm crime victims and our communities, against the interest of public safety.

Section 6 would allow the release of suspects in cases of serious, felony crimes, rather than focusing on low-level misdemeanants, by creating a strong presumption of release for suspects in many B and C felonies. We find this concerning because we note that many of these crimes, such as violation of privacy, promoting porn for minors, and breaking and entering, are red flags for sexual offending.

Section 3 would rush bail reports and compromise their accuracy by requiring an impracticable two-day deadline for complex assessments concerning suspects' likelihood of recidivism, no-showing for court, and danger posed to individuals and the community, and concerning suspects' ability to pay bail.

Section 5 would allow criminal defendants to be released on unsecured bail. However, the measure does not provide Hawai'i the tools and infrastructure needed to successfully administer an unsecured bail system, as it does not provide enforcement mechanisms to bring bail-jumpers into custody or collect forfeited bail amounts owed to the public.

We also note the need for more case management, monitoring, and social services to support pretrial reform and keep the public safe. The Pretrial Task Force recommended strong upfront investment in this infrastructure, citing Washington, D.C.'s pretrial agency with 350 employees (75% case managers) and a \$65 million annual operating budget. However, the Hawai'i Public Safety Department's request relating to the similar H.B. 1289 included only \$3 million annually for these purposes.

SATC and our partner agencies hope that we will have the opportunity to work with the Legislature to address these concerns. Thank you for the opportunity to comment on this measure.

TESTIMONY ON SB 192, HD 2, SD 1 RELATING TO BAIL BEFORE THE HOUSE
COMMITTEE ON FINANCE

March 29, 2019

3:30 pm

Conference Rm. 308

Aloha Chair Luke, Vice Chair Cullen, and members of the House Committees on Finance, **my name is Stephen Morse. I am the Executive Director of Blueprint for Change (BFC) and am here today to support SB 192. HD 2, SD 1, Relating to Bail.**

Members, for the record, BFC is the fiscal, technical, and administrative support entity for seven Neighborhood Place centers statewide that provide support and strengthening services to families at risk of child abuse and neglect under a POS contract with the Department of Human Services. Historically, our work has focused on traditional risk factors for child abuse, including homelessness or unstable housing, unemployment and low incomes, substance abuse, chronic health problems, and physical disabilities. However, in 2014, after much research and analysis, BFC determined that one of the most severe risk factors for child neglect in the families we serve is that there is at least one parent who is incarcerated.

An estimated 2.7 million children nationwide have at least one parent that is incarcerated, and studies conducted by the National Fatherhood Initiative show that in terms of negative impacts on children, incarceration may be worse than the death of a parent or the divorce of parents. Even more disheartening is the evidence that children of incarcerated parents are more likely to become incarcerated themselves as teenagers or adults, thus continuing the “cycle of incarceration” that sadly becomes generational in some families.

Because of these alarming statistics, BFC, in January 2014, helped organize and convene a working group to explore the issues surrounding children and families impacted by parental incarceration and to come up with solutions. Called the Family Reunification Working Group (FRWG), the group is comprised of representatives from several child and family serving organizations and service providers. Besides ourselves, it includes, Hawaii Prisoners Resource Center, dba Holomua Center, the Office of Hawaiian Affairs, ALU LIKE, Inc., Lili`uokalani Trust, Keiki O Ka Aina, Family Programs Hawaii, Adult Friends for Youth, Community Alliance on Prisons, the Ka Hale Ho`ola No Na Wahine Program at the Fernhurst YWCA, Hawaii Technology Institute, Grandparents Raising Grandchildren, Pacific Alliance to Stop Slavery, Makana O Ke Akua Clean and Sober Living, Holomua Pu`uhonua, and the University of Hawai`i Center on the Family. It also includes parents of children who have been affected by incarceration, adults who were former children of incarcerated parents, ex-offenders, and Native Hawaiian cultural practitioners. The group established two immediate priorities to work on, one of which was to develop a database of children in Hawaii impacted by incarceration. During the 2015 State Legislature, the group was successful in getting a measure passed and signed into law (Act 16, SLH 2015) that requires the Hawaii Department of Public Safety's Corrections Division to collect data at the point of intake on the number of minor children under the age of 18 that offenders entering the Hawaii corrections system have.

We now have four years of data collected from Public Safety, and although there remains some reliability issues relating to the collection, a problem we are working with Public Safety on to fix, we feel safe in saying two things: (1) of the inmates being processed through intake during this period of time, at least 30% identified themselves as parents; and (2) approximately 4,000

children under the age of 18 are annually affected by parental incarceration. Again, this is based only on the intake data and does not include the number of minor children of parents who have been in the correctional system for several years.

One of the other main issues the FRWG identified in its discussions was the lack of resources to assist the affected children and families from becoming victimized themselves. Parental incarceration has been identified nationally as one of the top five Adverse Childhood Experiences (ACES) for children in the country. Studies have concluded that it contributes to low educational attainment, deviant behavior, and delinquency that eventually leads to incarceration itself.

The families left behind often struggle to sustain themselves financially and socially after the incarceration of one or more parents. For a large majority of these families, they are left without their primary means of support, namely the incarcerated parent who is unable to continue to provide an income. Many are left without adequate health care and other supports and are plunged into a deadly spiral of despair and hopelessness.

The passage of this bill is important for several reasons, but primarily, from a social services perspective, it will reduce the amount of time an incarcerated parent needs to spend incarcerated during the pre-trial period, allowing them to return home and once again be the income providers their families need to sustain themselves. It will help keep families united and the important familial bond between the children and the parent without which can lead to adverse effects that are detrimental to a child's development.;

Mahalo for allowing us to share this testimony with the Committee.

LATE



RE: Testimony in SUPPORT of SB192 SD1 HD2

ATTN: Chair Luke, members of the House Finance Committee

The Young Progressives Demanding Action (YPDA), representing 800+ registered members, supports efforts to implement meaningful sentencing reform; to reduce repeat offenders, recidivism and over-representation of minorities; to eliminate for-profit prisons; to remove non-violent offenders from prisons and to divert them, instead, to mental health, drug treatment and other community-based programs that have been proven to be more successful correctional tools than incarceration; and efforts to implement place-based, restorative justice methods, especially in Hawai‘i where Hawaiian over-representation can be directly attributed, in part, to a disconnection from culture and community.

Hawai‘i has a serious problem when it comes to its prison system. The state’s 40-year-old community correctional centers are dilapidated and horribly overcrowded, and the situation in these jails has now become a liability. Clearly something must be done to reduce crowding in these out-of-date facilities. But there exist two very different ideas of what that something should look like. The first idea is a doubling down on failed policy: building newer, larger incarceration facilities and, thereby, anchoring our society more firmly to an antiquated and injurious punitive system with a poor track record of reducing crime and, instead, a legacy of destroying lives and communities.

Over the course of the last 20 years, it’s become clear that the draconian austerity of the prison system incurs a high and multi-faceted cost on the inmate. It’s also, clearly, a strain on overburdened state budgets, and on the taxpayers themselves. On top of this, the prison system has been shown to be less effective at keeping communities safe than what David R. Karp and Todd R. Clear, in their essay “Community Justice: A Conceptual Framework” (2000), refer to as “community justice” solutions. These restorative, rather than punitive, solutions seek to heal and restore troubled people, returning them back to society in a condition in which they can be productive and contribute. This is the alternative path, and the one advocated for by YPDA.

But moving Hawai‘i away from the prison system has proven difficult. Every president since Richard Nixon—who first announced the “War on Drugs” in 1971—has adopted a “tough on crime” stance that is often replicated all the way down to the municipal level of government. This attitude, and its resulting policies, has resulted in the highest incarceration rate in the world. Between 1970 and 2010, the number of people incarcerated in the United States grew by 700 percent. We now incarcerate almost a quarter of the prisoners in the entire world, while representing only 5 percent of the world’s population. At no other point in U.S. history—even when slavery was legal—have so many people been deprived of their liberty.

During the 2019 Session, YPDA has focused primarily on supporting measures that would eliminate or drastically reduce our dependence on the cash bail system. Unfortunately, the majority of these bills were severely watered down, deferred, or adversely amended to the point that we could no longer support them. SB192 represents a modest step forward, providing some relief to our over-crowded incarceration facilities, and we urge you to pass it out of committee for the following reasons:

- Cash bail does not serve the function for which it was intended. The purpose of bail is not pretrial punishment. Bail is supposed to minimize the risk of flight and danger to society while preserving the defendant’s constitutional rights. However, requiring cash bail does not achieve any of these outcomes. Jurisdictions like Washington D.C. that have all-but replaced cash bail with smart justice reforms have seen better rates of court attendance and lower rates of re-arrest, all while satisfying the intent of bail without violating civil liberties.
- Cash bail has serious societal costs. Incarceration always disrupts lives, often leading to loss of employment, custody issues and loss of housing. These worsened outcomes derail people from the trajectory of their lives, leading to increased criminality, homelessness, health problems and other societal costs for which we all pay the price.
- Cash bail is overused and arbitrary. Hawai‘i’s courts require bail as a condition of release in 88 percent of cases. More than half of the arrestees in those cases were unable to post the amount required by the court. Although Hawai‘i’s Constitution prohibits “excessive bail,” many judges in Hawai‘i admit to arbitrarily setting bail at a certain amount based solely on the offense the individual is accused of committing.
- Cash bail violates the right to presumption of innocence. In the United States, the accused is presumed innocent until proven guilty, and the the Fifth and Fourteenth Amendments prohibit depriving a person of his or her liberty without due process of law (including while awaiting trial and regardless of indigence). Yet, in Hawai‘i, some 1,145 individuals are currently being held behind bars without having been convicted of a crime. Nationwide, 443,000 people are being detained without ever having been tried in a court of law. This is a gross violation of their civil liberties and amounts to an unconstitutional, extrajudicial punishment.
- Cash bail makes a mockery of justice. In Hawai‘i, 64 percent of those who could not afford bail changed their plea to guilty to get out of jail sooner. Using pre-trial detention to coerce arrestees into guilty pleas is routine practice for prosecutors throughout the country. Furthermore, a 2012 study conducted by the New York City Criminal Justice Agency found that pretrial detention has a negative impact on trial outcomes: among non-felony cases with no pretrial detention, 50 percent ended in conviction compared to a 92 percent conviction rate among cases with an arrestee who was detained.
- Cash bail allows the wealthy to buy their way out of jail. Most bail for all felony charges in the First Circuit is set in the \$11,000 to \$25,000 range, but it was as high as \$1 million in eight cases and \$2 million in two cases in 2015. Detention or release should not be conditioned on an

individual's wealth or income. A wealthy person can be just as dangerous as a poor person.

- Cash bail exacerbates institutional racism within the penal system. In Hawai'i, Native Hawaiians and Pacific Islanders are more likely to be arrested and detained with a bail amount set to an unreasonable cost based on their charge, record or lack thereof, and socioeconomic status. This is reflected nationally with other communities of color.
- Cash bail is a way for corporations to exploit poor communities. Often, the only way a person can maintain their innocence and return to their lives while awaiting trial is to pay a bail bondsman to front the cost of bail. These bail bondsmen do not reimburse accused people for the cost of their services should they be found innocent. Nor are they small businesses providing a service, as they often claim. In fact, they are fronts for multinational insurance companies that use America's backward penal system to extract wealth from poor communities that are over-targeted by police departments and suffer disproportionately from racist policies like Three Strikes and mandatory minimum sentences.
- Hawai'i spends more than \$60 million on pretrial incarceration each year. It costs a lot of money to lock people up behind bars: about \$54,500 per detainee each year, or \$150 per day. Compare this to Washington D.C., which releases 85-90 percent of pretrial arrestees and spends a mere \$18 a day in supervising costs per individual. The U.S. spends \$13.6 billion annually to detain people who have not been convicted of a crime.
- Hawai'i's correctional facilities are a liability. Six out of nine Hawai'i facilities are "over design capacity" and a four are over "operational capacity." The Department of Justice has warned the State of Hawai'i that it will sue unless the issue is addressed quickly. While building a newer, larger, prison will alleviate crowding, it won't address the underlying causes of over-incarceration. Bail reform is the swiftest and more sure-fire way to reduce our overcrowded jail population, while simultaneously beginning to reform the penal system toward true justice.

While SB192 does not do enough to reform the criminal justice system, it at least gets us moving in the right direction. We would urge the legislature to consider the points above and make a genuine effort to reform the system going forward.

YPDA

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finance1 - Sean

From: Jim Brumbaugh <jim@brumbaughmauilaw.com>
Sent: Friday, March 29, 2019 9:31 AM
To: FINtestimony
Subject: SB192 SD192 SD1 HD2

LATE

I support eliminating "cash only" bail

From: pat pat <truvillion11@gmail.com>
Sent: Friday, March 29, 2019 10:00 AM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

LATE

I strongly SUPPORT SB192 SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly. I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families. I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system. For these reasons, I humbly request that you PASS SB192 SD1, HD2 out of your committee.

LATE

From: Gina Gormley <ginagormleylaw@gmail.com>
Sent: Friday, March 29, 2019 10:12 AM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

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I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system.

For these reasons, I humbly request that you **PASS** SB192, SD1,HD2 out of your committee.

LATE

From: Verdine Kong <verdabirdy@gmail.com>
Sent: Friday, March 29, 2019 8:19 AM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

I strongly SUPPORT SB192 SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly. I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety. I further support an educational vehicle by which our communities on the respective islands are made aware of the negative impact current bail practices have on our families and the fact that taxpayers do NOT benefit by holding people in pre-trial detention because of their inability to post bail. It is easy to ignore people who are incarcerated but we end up paying enormous amounts - reportedly, \$50,000. annually per defendant- to house people in jail without programs and without proven rehabilitation efforts.

Mahalo for your consideration of my statement.
With aloha, Verdine Kong

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

LATE

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

DWIGHT K. NADAMOTO
ACTING PROSECUTING ATTORNEY

ACTING FIRST DEPUTY
PROSECUTING ATTORNEY



**THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Thirtieth State Legislature
Regular Session of 2019
State of Hawai'i**

March 29, 2019

RE: S.B. 192, S.D. 1, H.D. 2; RELATING TO BAIL.

Chair Luke, Vice-Chair Cullen, and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to S.B. 192, S.D. 1, H.D. 2, particularly Section 6.

While the Department appreciates the Committee's good intentions to improve upon current criminal pretrial procedures, we agree with the Task Force's recommendation at the informational briefing on January 22, 2019, when it suggested that the prudent next step would be data collection surrounding the recent changes implemented by various stakeholders, since the conclusion of H.C.R. 134.

Of the twenty or so substantive sections of S.B. 192, S.D. 1, H.D. 2, the Department is particularly opposed to **Section 6 (pg. 11-13)**. As currently written, this section creates a "rebuttable presumption" that an individual charged with a criminal offense shall be released (or admitted to bail under the least restrictive conditions), unless the prosecution proves by clear and convincing evidence that one or more "serious risks" exist in that case. Thus, even if prosecution proves that it is more likely than not that a particular defendant poses all of the serious risk criteria—serious risk that defendant will flee, intimidate witnesses, pose a danger to any person or community, and will engage in illegal activity—that would no longer be sufficient reason for the defendant to be held.

Moreover, in order for the prosecution to (even attempt to) prove these things, it appears that evidentiary hearings would be required, which would likely trigger a huge influx of contested hearings. Such an influx would then delay trial cases, create a backlog, and impose a large financial burden for a number of agencies without proper funding.

Evidentiary hearings would also mean an increased likelihood of re-traumatization for victims, who would be forced to testify yet another time, about their victimization. For example, a victim of Sex Assault in the Third Degree would first be subpoenaed to testify regarding the sexual assault in a preliminary hearing or grand jury, for charging purposes. Then, as proposed in S.B. 192, S.D. 1, H.D. 2, this same sex assault victim would next be required to testify in a bail hearing, knowing that if their testimony is “insufficient” or otherwise “fails” to meet the standard, then the perpetrator would be summarily released and back in the community almost immediately. After the bail hearing, the victim would then be subpoenaed for court (at minimum) a third time for trial, to recount and re-live their sexual assault on the witness stand, subject to cross-examination, and face-to-face with the perpetrator. A minimum of three appearances could also amount to a lot more, if any of the proceedings are ever continued.

All of this additional time-commitment, stress, and potential re-traumatization, could potentially lead to reduced participation by victims who feel re-victimized by the criminal justice system, which is ostensibly in place to provide for everyone’s protection.

As noted above, the Department agrees with the Task Force’s statements at the informational briefing of January 22, 2019, which noted that various stakeholders have already implemented significant changes in the pretrial process, without any change in statutes to date. Since their work on the Task Force, the courts have begun routinely holding a prompt bail hearing at the initial arraignment date, for cases charged by information or by grand jury. Notably, all of the parties needed for a meaningful bail hearing—meaning the Deputy Prosecuting Attorney, the Deputy Public Defender and the Judge—are already present at arraignment and plea. Thus, bail hearings are now being held within seven days after service of the information charging warrant of arrest or the grand jury bench warrant, consistent with the requirement for arraignment and plea hearings (see Hawaii Rules of Penal Procedure, Rule 10), with no financial burden to the involved agencies.

Although the Task Force report provided twenty-five various recommendations for pre-trial reform, many recommendations have already been implemented, without statutory requirements or mandates. Since the completion of the Task Force, it is our understanding that each agency has re-evaluated their policies and procedures, and reassessed their approach to pretrial issues. As previously noted, we would strongly encourage the Committee to allow time for appropriate data collection and analysis of these changes, as recommended by the Task Force at the informational briefing on January 22, 2019, before making any further statutory changes.

For all the reasons above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of S.B. 192, S.D. 1, H.D. 2. Thank you for the opportunity to testify on this matter.

**SB192 SD1 HD2
RELATING TO BAIL**
House Committee on Finance

March 29, 2019

3:30 p.m.

Room 308

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB192 SD1 HD2. Section 5 of this draft includes the original contents of this bill, a measure in OHA's 2019 Legislative Package. **This section would give judges the option to offer “unsecured bail,” or a promissory note, to certain incarcerated individuals, as a means to reduce the severe and disproportionate consequences of cash bail on indigent defendants and communities, relieve the overcrowding of our detention facilities, and save significant taxpayer dollars.** Sections 1-4 and 6-22 of this draft, as amended from previous drafts, would effectuate nearly all of the recommendations of the HCR134 Task Force on Pretrial Reform that OHA, as a member of the Task Force, has endorsed.

Our current cash-secured bail system has resulted in harmful, unnecessary socioeconomic impactsⁱ on low-income individuals and their families, a majority of whom are Native Hawaiian. The purpose of bail is not to punish the accused, but to allow for their pretrial release and ensure their return to court; however, our cash bail system as applied effectively punishes low-income defendants without a trial. Unlike the wealthy, indigent defendants often may not be able to come up with their categorically predetermined cash bail amounts up front, particularly when they may already be struggling to pay their rent, or support their families. For such individuals, being too poor to surrender their cash bail amount means not only the loss of their freedom for weeks, months, or longer, but can also result in the loss of their jobs, housing, and even custody of their children. In effect, our cash bail system punishes poor individuals and their families without any trial or conviction; many indigent defendants facing uncertain and potentially lengthy trial timelines may even forego their right to a trial, and agree to plea deals in exchange for more certain release dates. Notably, detaining individuals for weeks or months before their trial simply because they are too poor to post bail also represents a substantial cost to taxpayers,ⁱⁱ and further exacerbates the overcrowding in our detention facilities.ⁱⁱⁱ The current draft of this measure accordingly offers several strategies that can work in tandem to mitigate the continuing impacts of cash bail on poor communities and comprehensively address the inefficiencies of our current pretrial system.

1. Section 5: Offering Judges an Unsecured Bail Option

OHA **strongly supports** Section 5 of SB192 SD1 HD2, which offers an unsecured bail alternative that will help to ensure that poor defendants are not unnecessarily punished by our cash-secured bail system. Rather than requiring defendants that are granted cash bail to

surrender their entire bail amount up-front, Section 5 of this measure gives judges the option to allow certain defendants to secure their release by signing a promissory note for all or part of their bail amount. Specifically, judges may make such an “unsecured bail” option available to a defendant granted cash bail who 1) would face financial hardship in surrendering their set bail amount or paying a bail bonding agent, and 2) would face threats to their employment, housing, health, or family stability if they were to remain incarcerated pending trial; judges may make their decision based on a defendant’s and their co-signers’ financial and personal circumstances, pre-trial risk assessment factors, the offense charged and potential sentence carried, and any other relevant factors. Should a defendant fail to appear at trial or violate any conditions of their release, the promissory note and any surrendered bail amount would ensure that the defendant and their cosigners are still held financially accountable. Accordingly, Section 5 of SB192 SD1 HD2 offers a tailored and targeted approach to mitigate the harsh and disproportionate consequences of cash bail on poor defendants and their families.

In other jurisdictions and in the federal system, unsecured bail has been shown to relieve the burden of cash bail on the poor, while at the same time reducing the overcrowding of detention facilities, with studies further showing no effect on trial appearance rates. For example, the Federal District of Hawai‘i uses unsecured bail along with recognizance and conditional and supervised releases to execute 98 percent of its pretrial releases, without any cash, property, or other security.^{iv} Notably, the Federal District also reports that zero percent of their released defendants fail to appear for trial.^v Studies from other jurisdictions also show that unsecured bail is **just as effective** at ensuring defendants’ court appearance and maintaining public safety as cash-secured bail, while being **far more efficient** than cash bail at freeing up jail space.^{vi} Thus, **SB192 SD1 HD2’s unsecured bail system offers an alternative that can reduce the severe consequences of cash bail on poor defendants and communities, provide relief to rampant overcrowding in our detention facilities, and save taxpayer dollars —without affecting trial appearance rates or public safety.**

2. Sections 1-4 and 6-22: Implementing the Recommendations of the HCR134 Task Force on Pretrial Reform

OHA further **supports** Sections 1-4 and 6-22 of this draft, which would implement the comprehensive pretrial system reform recommendations of the HCR134 Task Force on Pretrial Reform, and thereby improve the efficiency of our pretrial processes, reduce the state’s reliance on cash bail, and help reduce the costly and inhumane overcrowding in our jails.

OHA supports the proposed adoption of the recommendations put forward by the HCR134 Task Force. The HCR134 Task Force, composed of experts and representatives from a broad collection of agencies and organizations who interface with the pretrial system, spent one and a half years examining the breadth and depth of Hawai‘i’s bail system and, in its 2018 report, made specific recommendations in many areas marked for improvement. The OHA representative to the HCR134 Task Force endorsed nearly all of these recommendations. Specifically, OHA emphasizes the following Task Force recommendations addressed in the current draft of this measure:

- **Encouraging judicial pursuit of the least restrictive conditions necessary** to ensure defendants' appearance at trial, in order to reduce barriers to pretrial release and improve pretrial release compliance;
- **Reducing, wherever possible, the use of cash bail** and, thereby, its impacts on low-income defendants and their families;
- **Ensuring that where cash bail is used, its amount is set pursuant to an individualized assessment of a defendants' ability to afford it**, to reduce inequitable pretrial detention and its consequences;
- **Requiring Intake Service Centers to prepare bail reports in a timely manner, to include a robust set of relevant facts necessary to inform pretrial release decisions**, such as defendants' financial circumstances and fully executed pretrial risk assessments (with information about any administrative overrides applied to increase risk scores or elevate administrative risk recommendations);
- **Ensuring that pretrial risk assessments are periodically re-validated**, that they and the processes used to administer them are **regularly evaluated** for effectiveness and fairness, and that any validation and evaluation findings are publicly reported;
- **Providing sufficient and timely information to all participants** to ensure a meaningful opportunity to address bail at a defendant's initial appearance; and
- **Expanding alternatives to pretrial detention** including residence and community-based alternatives, electronic monitoring, and treatment programs.

OHA believes that these recommendations would significantly reduce the harms and inefficiencies arising from the State's overreliance on cash bail.

For the reasons set forth above, OHA respectfully urges the Committee to **PASS** SB192 SD1 HD2. Mahalo piha for the opportunity to testify on this important measure.

ⁱ Socioeconomic effects include daily costs of detaining each inmate, family separations, child and welfare interventions, loss of family income, reduction of labor supply, forgone output, loss of tax revenue, increased housing instability, and destabilization of community networks. See, e.g., MELISSA S. KEARNEY THE ECONOMIC CHALLENGES OF CRIME & INCARCERATION IN THE UNITED STATES THE BROOKINGS INSTITUTION (2014) available at <https://www.brookings.edu/opinions/the-economic-challenges-of-crime-incarceration-in-the-united-states/>.

ⁱⁱ On average, it costs \$182 per day—\$66,439 per year—to incarcerate an inmate in Hawai'i. STATE OF HAWAII DEPARTMENT OF PUBLIC SAFETY: FISCAL YEAR 2018 ANNUAL REPORT 16 (2018) available at <https://dps.hawaii.gov/wp-content/uploads/2018/12/PSD-ANNUAL-REPORT-2018.pdf>.

ⁱⁱⁱ All four of the state-operated jail facilities—where pretrial defendants are detained—are assigned populations between 166-250% of the capacities for which they were designed and hold populations amounting to 127-171% of their modified operational capacities. STATE OF HAWAII DEPARTMENT OF PUBLIC SAFETY, END OF MONTH POPULATION REPORT, NOVEMBER 30, 2018 available at <https://dps.hawaii.gov/wp-content/uploads/2018/12/Pop-Reports-EOM-2018-11-30.pdf>.

^{iv} Carol M. Miyashiro, Chief U.S. Pretrial Services Officer, U.S. District Court-District of Hawai'i, Presentation to HCR 134 (2017) Task Force (Aug. 11, 2017).

^v Refers to the calendar year period from April 1, 2016 through March 31, 2017. *Id.*

^{vi} See, e.g., MICHAEL R. JONES, UNSECURED BONDS: THE AS EFFECTIVE AND MOST EFFICIENT PRETRIAL RELEASE OPTION 10-11, 14-15 (2013), available at https://nmcourts.gov/uploads/FileLinks/251c46be89664ada8ab0d99c3c426956/Unsecured_Bonds_The_As_Effective_and_Most_Efficient_Pretial_Release_Option_Jones_2013.pdf.

SB-192-HD-2

Submitted on: 3/29/2019 10:51:55 AM

Testimony for FIN on 3/29/2019 3:30:00 PM

LATE

| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------------------|----------------------|--------------------|--------------------|
| S. Kukunaokala Yoshimoto | Blueprint for Change | Support | No |

Comments:

Aloha Chair Luke, Vice Chair Cullen, members of the committee,

I strongly **SUPPORT** SB192, SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly.

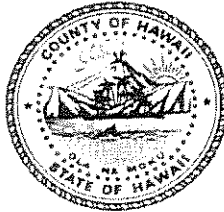
I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families.

I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system.

For these reasons, I humbly request that you **PASS** SB192, SD1,HD2 out of your committee.

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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO SENATE BILL 192, SD1,
HD2

A BILL FOR AN ACT RELATING TO CRIMINAL PRETRIAL
REFORM

LATE

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Rep. Ty J.K. Cullen, Vice Chair

Friday, March 29, 2019, 3:30 p.m.
State Capitol, Conference Room 308

Honorable Chair Luke, Vice-Chair Cullen, and Members of the Committee on Finance, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in opposition to Senate Bill No. 192, SD1, HD2.

This measure seeks to implement criminal pre-trial recommendations based on the findings of House Concurrent Resolution 134 Task Force Report toward a comprehensive strategy of pretrial system reform, and authorizes a defendant in custody to petition a court for unsecured bail.

As a result of the Criminal Pretrial Task Force, agencies have made significant changes to pretrial hearings and procedures. We agree with the Task Force's recommendation that the prudent next step would be data collection and analysis following the changes that have been implemented.

While we appreciate the objective of improving upon current criminal pretrial procedures, we strongly encourage the Committee to permit time for appropriate data collection and analysis, including input from a full group of stakeholders, before making any further statutory changes. We must ensure that the release of suspects from custody is appropriate and based on accurate information to effectively safeguard crime victims and the community.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai'i opposes the passage of Senate Bill 192, SD1, HD2. Thank you for the opportunity to testify on this matter.

SB-192-HD-2

Submitted on: 3/29/2019 8:02:00 AM

Testimony for FIN on 3/29/2019 3:30:00 PM

LATE

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------|--------------|--------------------|--------------------|
| Kehaulani Lum | Individual | Support | No |

Comments:

Mahalo nui loa for your strong consideration of this measure.

I strongly **SUPPORT** SB192, SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly.

I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families.

I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system.

For these reasons, I humbly request that you **PASS** SB192, SD1,HD2 out of your committee.

SB-192-HD-2

Submitted on: 3/29/2019 8:31:46 AM

Testimony for FIN on 3/29/2019 3:30:00 PM

LATE

| Submitted By | Organization | Testifier Position | Present at Hearing |
|----------------|--------------|-----------------------|-----------------------|
| Ashley LeCarno | Individual | Support | No |

Comments:

100% in support.

LATE

HOUSE OF REPRESENTATIVES
THE THIRTIETH LEGISLATURE
REGULAR SESSION OF 2019

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair
Rep. Ty J.K. Cullen, Vice Chair

| | |
|--------------------------|-------------------------|
| Rep. Stacelynn K.M. Eli | Rep. Nadine K. Nakamura |
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| Rep. Scot Z. Matayoshi | |

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SERGEANT-AT-ARMS
HOUSE OF
REPRESENTATIVES

NOTICE OF HEARING

DATE: Friday, March 29, 2019
TIME: 3:30 P.M.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

A G E N D A # 3

SB 192, SD1, HD2
(HSCR1702)
Status

RELATING TO BAIL.
Implements recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017. Authorizes a defendant in custody to petition a court for unsecured bail.

PVM, JUD, FIN

Chair and Members of the Committee:

My name is James Waldron Lindblad. I am a former pretrial worker and am presently a bail bond agent. I also sell surety bonds including licensing bonds. My primary and chief concern is on page 11, of this measure and the words *bailable by sufficient sureties* being taken out of HRS 804-3 Bailable offenses.

§804-3 Bailable offenses. (a) For purposes of this section, "serious crime" means murder or attempted murder in the first degree, murder or attempted murder in the second degree, or a class A or B felony, except forgery in the first degree and failing to render aid under section 291C-12, and "bail" includes release on one's own recognizance, supervised release, and conditional release.

(b) Any person charged with a criminal offense shall be bailable by sufficient sureties; provided that bail may be denied where the charge is for a serious crime, and:

- (1) There is a serious risk that the person will flee;
- (2) There is a serious risk that the person will obstruct or attempt to obstruct justice, or therefore, injure, or intimidate, or attempt to thereafter, injure, or intimidate, a prospective witness or juror;
- (3) There is a serious risk that the person poses a danger to any person or the community; or
- (4) There is a serious risk that the person will engage in illegal activity.

(c) Under subsection (b) (1) a rebuttable presumption arises that there is a serious risk that the person will flee or will not appear as directed by the court where the person is charged with a criminal offense punishable by imprisonment for life without possibility of parole. For purposes of subsection (b) (3) and (4) a rebuttable presumption arises that the person poses a serious danger to any person or community or will engage in illegal activity where the court determines that:

- (1) The defendant has been previously convicted of a serious crime involving violence against a person within the ten-year period preceding the date of the charge against the defendant;
- (2) The defendant is already on bail on a felony charge involving violence against a person; or
- (3) The defendant is on probation or parole for a serious crime involving violence to a person.

(d) If, after a hearing the court finds that no condition or combination of conditions will reasonably assure the appearance of the person when required or the safety of any other person or community, bail may be denied. [L 1892, c 32, §1; RL 1925, §3978; RL 1935, §5432; RL 1945, §10733; RL 1955, §256-3; am L 1957, c 282, §7; HRS §709-3; ren L 1972, c 9, pt of §1; am L 1980, c 242, §2; am L 1981, c 97, §1; am L 1985, c 166, §1; am L 1987, c 139, §5]

My vision is to keep Hawai'i a leader in pretrial release and to enhance our already high-functioning pretrial and bail process and not to follow mainland trends that are not-yet proven or where data is not yet sufficient.

I am also here today to share my forty plus years of front line experience by participating in the process and to show support for testimony from our Prosecutors, our Attorney General, our law enforcement and our Department of Public Safety. I participated in almost all of the HCR 85 Task Force meeting and I submitted well over 110 emails along with many pages of testimony and I participated in the HCR 134 Task Force by testifying and writing testimony. The HCR 134 Task Force report is a world class report and the most thorough and complete analyses of bail and the pretrial process ever written anywhere in America and we can be very proud of the work and effort and the resulting HCR 134 Task Force report.

The question is how to accurately legislate the things asked for in the HCR 134 Task Force report but also, when to legislate changes. Should we let these matters percolate for a year and encourage the judicial changes already being made like bail reform with lower bail amounts and consistent statewide decisions combined with the new twice weekly felony bail hearings every Monday and Tuesday at 8:30 AM., that have occurred since 01.22.2019. Should we watch as judges go to HPD every single weekend to release many pretrial defendants and gather data regarding the 50 drunk drivers and the many persons released even with failure to appear warrants that are being releases every single weekend on either bail or OR by the weekend duty judge as HPD arrest logs posted online prove up? Should we create an Oversight Commission or should we allow the Director of Public Safety to do the needed things and report to the Senate and to our Governor? I personally have great faith in our very fine Department of Public Safety management who do so much with limited budgets.

The purpose of SB 192, SD1 HD2, is to improve the criminal justice system in Hawaii. The measure began as a stand alone unsecured bail measure but has now morphed into many things included in HB 1289 and SB 1421. Nevertheless, the intent of this measure was never to seek to eliminate bail by sufficient sureties nor does the measure seek to get rid of bail agents and or eliminate bail agents as options for our judges as this was not the intent here nor was it ever recommended by the HCR 134 Task Force report. No measure has been introduced in Hawaii to kill the bail bond industry or to eliminate bail posted by parents using property or cash as sufficient sureties under our statutes. The measure establishes the Hawaii Correctional System Oversight Commission. Creates a position for an Oversight Coordinator for the Commission. Implements recommendations of the Criminal Pretrial Task Force convened pursuant to House Concurrent Resolution No. 134, House Draft 1, Regular Session of 2017. (Proposed S.D. 2)

*This testimony today is focused on page 11, of the Proposed measure SB 192, SD1 HD2 and my objections to taking out certain language from our statutes regarding *bailable by sufficient sureties* which, in my view, is a cornerstone of bail in America and should be protected right and maintained. I am also here to state my belief the New Version here of SB 192 SD1 HD2 went off subject by adding back components of HB 1289 creating a sort of pieced together hodgepodge and in my view, should not have further consideration and instead my choice and thinking is for this committee to consider the new Senate 1552 proposed SD1 version for clarity

and purpose because the Senate version better reflects the twenty-five recommendations of the HCR 134 Task Force Report. In fact, this version of SB 192 SD1 HD2, today has left out all the fifteen protections contained in and listed in the HRS 804 B proposed section on Pages 12, 13 & 14, as called for by the HCR 134 Task Force and that were incorporated into both the Original HB 1289 and SB 1421, measures and these fifteen protections are incorporated into the new HB 1552 Proposed SD2. This is an important mistake those person in authority should read over again to ensure this is what is now intended and I think should explain to decision makers why the fifteen protections are not included in this new SB 192 SD1 HD2. (Protections listed at end)

HCR 134 Task Force members felt eliminating money bail for most misdemeanants and many class C felony cases should be incorporated with more citation type releases and I agree but only when certain restrictions apply as listed in the new proposed Senate Version 1552 SD2.

The intent of the SB 192, SD1 HD2 bail section overall and specifically on Page 11, is to improve the pretrial process and not to eliminate bail by sufficient surety and not to eliminate bail agents. There is no purpose or reason I know of that requires the bill to eliminate the *sufficient sureties* language from our statutory scheme such as Page 11, of the bill seems to do. Further, even if the intent is not to eliminate bail agents right now by eliminating these words, ***bailable by sufficient sureties***, the taking out of this language would make is easier to eliminate bail agents later and this is not the purpose or intent of SB 192 SD1 HD2, nor was it the recommendation of the HCR 134 Task Force report.

I ask that the committee report here today on SB 192 SD1, HD2, to accurately reflect the intent of this measure which is not to eliminate bail agents or any other means or judicial options regarding bail or pretrial release by sufficient sureties. In other words, this measure does not want to limit judicial options or choices but the measure wants to add options and choices for our judges.

1 SECTION 6. Section 804-3, Hawaii Revised Statutes, is
2 amended by amending subsections (a) through (c) to read as
3 follows:

4 "(a) For purposes of this section[, "~~serious crime~~"]:
5 "Serious crime" means murder or attempted murder in the
6 first degree, murder or attempted murder in the second degree,
7 [~~or~~] a class A [~~or B~~] felony, [~~except forgery in the first~~
8 ~~degree and failing to render aid under section 291C 12, and~~
9 ~~"bail"] or a class B or C felony involving violence or threat of~~
10 violence to any person.

11 "Bail" includes release on one's own recognizance,
12 supervised release, and conditional release.

13 (b) [~~Any person charged with a criminal offense shall be~~
14 ~~bailable by sufficient sureties, provided that bail may be~~
15 ~~denied where the charge is for a serious crime, and:] There
16 shall be a rebuttable presumption that a person charged with a
17 criminal offense, other than a serious crime, shall be released
18 or admitted to bail under the least restrictive conditions
19 required to ensure the person's appearance and to protect the
20 public, unless the prosecution demonstrates by clear and
21 convincing evidence that:~~

As such, please see the Barton Case:

<http://808bail.com/honolulu/cash-bail-in-washington-state-barton-ruling/>

In my view, the Barton case explains the importance of bail by sufficient sureties best. Substituting cash or property for bail by sufficient sureties is also explained.

History:

My son Nick Lindblad previously submitted the following concerns relevant to this section on sufficient sureties when HB 1289 was heard and the section he addresses is now contained on Page 11, of the new SB 192 SD1 HD2. The same language I object to here on Page 11 was then contained on Page 14, of the HB 1289 and that measure was deferred. This testimony inserted here applies to reasons and negative effects or unintended consequences of taking out the bailable by sufficient sureties language.

Previous Testimony- Bailable by Sufficient Sureties.

SB 1421:

"I would like to openly contest the removal of the following crossed out language contained on page 14 of Senate Bill 1421:

13 (b) ~~[Any person charged with a criminal offense shall be~~
14 ~~bailable by sufficient sureties; provided that bail may be~~
15 ~~denied where the charge is for a serious crime, and:]~~ There

I believe removal of this sentence causes 3 adverse outcomes which a) decreases equal access to pretrial release and b) impede the goal of solving mass incarceration.

Adverse outcome #1 - Removing the specific words “sufficient sureties” inadvertently removes the practice of third party actors assisting the most vulnerable of detainees and strengthening their argument for release.

For example, a bail agent, is a third party, which functions as a “sufficient surety” to guarantee a detainee will return to court after release from custody. It’s critical to recognize sufficient sureties, because stand alone, many detainees do not qualify for release upon review of their attendance record, previous arrests, and mental health/substance abuse/housing history.

Adverse outcome #2 - A liberal defining of “sufficient sureties” can expand access to pre-trial release by involving many “alternative sureties” that are both sufficient and effective.

For example, the concept of a sufficient third party as surety, maybe also be applied to:

- social service agencies-military chain of command units
- church or faith based groups-non-profit and community outreach groups
- clean and sober home programs-drug treatment programs (inpatient & outpatient)
- mental health agencies -sponsors pledged to assist in supervised released programs
- innovative, but yet to be discovered or implemented third parties which can assist and support detainees through novel alternative programming

As I interpret the future of pretrial release, I think it's critical to keep the term “sufficient sureties” in the statutes because the more options that may be associated with the term, the more cause a judge may find to release a detainee.

Adverse outcome #3 - A undefined benefit to removing the term “sufficient sureties.”

Unfortunately, I cannot see the benefit of the sentence’s removal. Although the upside is unclear, I admit I could be missing a detail or even the bigger picture as to why the sentence must be removed.

In conclusion, my experience has been that the help of a third party, sufficient surety, overwhelmingly strengthens the case for a detainee’s release. Without a sufficient surety’s involvement, a Judge essentially releases a detainee on their “own recognizance,” with optional

conditions set by the court; which is fine, but it's also the least effective way to guarantee a defendant appears in court and highest category for re-arrest according to the US Department of Justice's Bureau of Justice Statistics report on pre-trial released felony defendants:

<https://www.bjs.gov/content/pub/pdf/prfdsc.pdf>

Table 7. State court felony defendants in the 75 largest counties charged with pretrial misconduct, 1990-2004

| Variable | Number of defendants | Percent of released defendants charged with pretrial misconduct | | | |
|--------------------------|----------------------|---|----------|-------------------|----------|
| | | Any type | Rearrest | Failure to appear | Fugitive |
| Type of pretrial release | | | | | |
| Release on recognizance | 80,865 | 34% | 17% | 26% | 8% |
| Surety bond | 78,023 | 29 | 16 | 18 | 3 |
| Conditional release | 31,162 | 32 | 15 | 22 | 6 |
| Deposit bond | 20,993 | 30 | 14 | 22 | 7 |
| Unsecured bond | 17,001 | 36 | 14 | 30 | 10 |
| Full cash bond | 11,190 | 30 | 15 | 20 | 7 |
| Property bond | 3,649 | 27 | 17 | 14 | 4 |
| Emergency release | 2,656 | 52 | 17 | 45 | 10 |

I see no reasoning or upside of the aforementioned sentence's removal.

My feeling is the removal is a goof or a mistake and needs correcting. This is because it is my understanding removal or banning of money bail itself or bail agents or bail by sufficient suretyship is not intended with the SB 1421 intent or reasoning. As a suggestion, putting the language back would clarify the true intention as there is nothing in the HCR 134 report demanding the removal or banning of bail agents or modifying bail suretyship in Hawaii."

Summary:

I also take the following quote from an attorney familiar with pretrial release and bail matters who has 50 years of practicing law in Hawaii:

... “when judges paid more attention to the individuals brought before them. Perhaps it was because the judges had the responsibility to make the decision and could not defer to institutional cover.”

*Institutional cover in this context means the bail report.

We all want fewer people in jail, we are all concerned about the decrepit conditions of our present facilities and we all know the need for adequate jail/prison bedspace and I think HCR 134 report positions us for a giant step in the right direction and I support any and all recommendations of the HCR 134 Task Force. The HCR 134 Task Force did not ask for bail by sufficient sureties to be eliminated and the report does not want to ban bail agents. The HCR 134 report wants to improve the process. The recommendations in the report seek to improve current pretrial practices, with the goal of achieving a more just and fair pretrial release and detention system, maximizing defendants’ release, court appearance and protecting community safety.

I agree with the HCR 134 Task Force report and the twenty-five recommendations but we need to correct page 11, and put the ***bailable by sufficient sureties*** language back in to accurately reflect the intent of the HCR 134 Task Force report.

Thank you for this opportunity to testify on this measure.

James Waldron Lindblad

808-780-8887

James.Lindblad@Gmail.com

Rev 03.29.2019

See additional info:

This section from HB 1289 contains fifteen protections and is now missing from SB 192, SD1, HD2. These protections are included in the new Senate measure HB 1552 Proposed SD2.

- 6 §804-B Monetary bail; non-violent offenders. (a) Any
7 defendant arrested and charged with a traffic offense, a
8 violation, a non-violent petty misdemeanor offense, or a non-
9 violent misdemeanor offense shall be released on the defendant's
10 own recognizance conditioned upon:
- 11 (1) The defendant's appearance in court; and
12 (2) Any other least restrictive, non-financial condition
13 necessary to:
- 14 (A) Ensure the defendant's appearance in court; and
15 (B) Protect the public.
- 16 (b) This section shall not apply if:
- 17 (1) The offense involves:
- 18 (A) Assault;
19 (B) Terroristic threatening;
20 (C) Sexual assault;
21 (D) Abuse of family or household members;



- 1 (E) Violation of a temporary restraining order;
2 (F) Violation of an order for protection;
3 (G) Operating a vehicle under the influence of an
4 intoxicant;
5 (H) Negligent homicide; or
6 (I) Any other crime of violence; or
7 (2) One or more of the following apply:
8 (A) The defendant has a history of non-appearance in
9 the last twenty-four months;
10 (B) The defendant has at least one prior conviction
11 for a misdemeanor crime of violence or felony
12 crime of violence within the last twenty years;
13 (C) The defendant was pending trial or sentencing at
14 the time of arrest;
15 (D) The defendant was on probation, parole, or
16 conditional release at the time of arrest;
17 (E) The defendant is also concurrently charged with a
18 violent petty misdemeanor, a violent misdemeanor,
19 or any felony offense arising from the same or
20 separate incident; or



*The HCR 134 Task Force also called for protections on many pages including page 88.

The Task Force recommends that HRS § 804 be amended to add a new provision:

804-1.2 Monetary bail, non-violent offenders. [NEW PROVISION]

(1) Any defendant arrested and charged with a traffic offense, a violation or non-violent petty misdemeanor or non-violent misdemeanor offense shall be released on their own recognizance conditioned upon their appearance in court and any other least restrictive non-financial condition necessary to assure their appearance in court and to protect the public, except this shall not apply if:

(a) the offense involves assault, terroristic threatening, sexual assault, abuse of family and household members, violation of a temporary restraining order, violation of an order for protection, driving under the influence, negligent homicide or any other crime of violence; or

(b) one or more of the following apply:

1) the defendant has a history of non-appearance within the last 24 months;

2) the defendant has at least one prior conviction for a misdemeanor or felony crime of violence;

3) the defendant is pending trial or sentencing at the time of arrest;

4) the defendant is on probation, parole or conditional release at the time of arrest;

5) the defendant is also concurrently charged with a violent petty misdemeanor, a violent

pretrial release decision for an eligible defendant without unnecessary delay, but in no case later than 48 hours after the eligible defendant's commitment to jail." However, the Task Force notes at least one bill before the New Jersey legislature seeking to modify their pretrial release statute, including a proposal to extend the time for pretrial release hearings to 96 hours. See also, New Mexico Court Rules 7-401 NMRA ("The court shall conduct a hearing under this rule and issue an order setting conditions of release as soon as practicable, but in no event later than (a) if the defendant remains in custody, three (3) days after the date of arrest if the defendant is being held in the local detention center, or five (5) days after the date of arrest if the defendant is not being held in the local detention center; or (b) first appearance or arraignment, if the defendant is not in custody.")

88

misdemeanor or any felony offense arising from the same or separate incident; or

6) the defendant presents a risk of danger to any other person or the community.

(2) If any of the exceptions in (1)(a) or (1)(b) apply, bail may be set in a reasonable amount and if the defendant is unable to post said bail, the defendant shall be entitled to a prompt bail hearing.



LATE

Committees: Committee on Finance
Hearing Date/Time: Friday, March 29, 2019, 3:30 p.m.
Place: Conference Room 308
Re: Testimony of the ACLU of Hawai'i With Comments Regarding S.B. 192, S.D. 1, H.D. 2, Relating to Bail

Dear Chair Luke, Vice Chair Cullen, and members of the Committee on Finance:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes with comments regarding S.B. 192, S.D. 1, H.D. 2. This measure was amended in its H.D. 2 version to implement the recommendations of the Criminal Pretrial Task Force (Task Force) convened pursuant to House Concurrent Resolution No. 134 (2017). While the ACLU of Hawai'i supports Part III, Section 5 of this measure, which allows defendants in custody to petition for unsecured bail, and while we support the general intent behind this legislation to implement the Task Force's recommendations, we have concerns that, as a whole, this legislation will do little to address the problems within our pretrial system.

Part III, Section 5

The ACLU of Hawai'i supports the previous version of this bill. An unsecured bond would require no upfront payment. Instead, the individual would sign a promissory note and the bail amount would be due if that person did not show up to court or comply with their conditions of release. This option helps people who cannot afford their bail, and reduces the involvement of for-profit agencies. Non-monetary options, such as unsecured bail, have been shown to be as effective as cash bail in ensuring that an individual appears in court. **While we believe that this proposal is only one piece in a much larger puzzle of solving Hawaii's broken pretrial system**, we appreciate that this legislation would reduce the system's disparate harm on low-income people.

Pursuant to this legislation, unsecured bail would only become an option *after* a determination by that court that an individual is eligible for release. Therefore, it is unnecessary and contrary to the intent of the legislation to 1) require a defendant to petition for unsecured bail before the option may be considered by the court, or 2) to include the current list of factors that the court may consider in setting unsecured bail. Unsecured bail is just as effective at ensuring appearance in court, and it is *unconstitutional to use cash bail for the purpose of detaining someone*. We request that these provisions be amended to allow judges to consider unsecured bail with or without a request by a defendant and to eliminate all factors to be considered by the court except for an individual's ability to pay.

Parts 1-II, Part III, Sections 6-11, Parts IV-VII

All other provisions of this measure adopt the recommendations of the Task Force. While we support the general intent behind this portion of the legislation and agree with some of the Task Force’s findings, we have concerns that with its broad exceptions to the eligibility for non-cash conditions of release, this legislation will do little to address the problems within our pretrial system.

Bail, in any form, *should never be used* as a punitive tool, and any conditions set for release should be only as restrictive as is absolutely necessary to ensure that the accused shows up to court. In *United States v. Salerno*, 481 U.S. 739, 755 (1987) the United States Supreme Court advised that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” But over the years our State has fallen short of that dictate. And, unfortunately, the list of exceptions in S.B. 192, S.D. 1, H.D. 2, is not “carefully limited” and will only cement a system in which detention prior to trial *is* the norm. In its current form, this measure seems to assume guilt upon arrest, when under our system of government precisely the opposite is supposed to be true.

While we appreciate the extensive work and deliberation behind the Task Force’s recommendations to improve our broken pretrial system, and agree with some of the Task Force’s proposals — such as allowing the accused to post bail 24/7 — the language in these provisions of the measure does practically nothing to prevent the continued abuse occurring in our cash-based system and this system’s disparate impact on the poor.

We have delineated our particular concerns and related recommendations concerning the Task Force recommendations in S.B. 192, S.D. 1, H.D. 2 in the following table. We are happy to continue this conversation and to work with the Committee on developing alternative language.

| Provision(s) of S.B. 192, S.D. 1, H.D. 2 | Description of provision(s) | Summary of concerns | Recommendation |
|--|---|---|--|
| Throughout | Uses the term “offenders” to describe individuals who have been arrested or are being considered for pretrial release or detention. | The individuals meant to be included in this term have not been convicted of the crime of which they are accused. They are not, therefore, “offenders.” | References to “offender(s)” should be deleted and replaced by “person,” “people” or “individual(s).” |

| | | | |
|--|--|--|---|
| <p>Part II, Section 3</p> <p>Part III, Sections 4-8, 10</p> <p>Part V, Section 14</p> <p>Part V, Section 15,</p> | <p>Various provisions stating the purpose of the legislation, establishing a rebuttable presumption of release, granting exemptions to the presumption, and implementing/expanding alternatives to pretrial detention.</p> | <p>The risks proposed to be considered for conditions of release are inconsistent throughout this legislation. At different points in the bill, the list of risks appears to include: non-appearance, protection of the public, obstruction and witness tampering, the safety of any other person or the community. Current framing regarding public safety creates too broad a net. Further, obstruction and witness tampering are separate crimes and should not be an additional consideration.</p> | <p>As a matter of policy, the appropriate risks should be that of: 1) intentional, willful flight; or 2) specific threat of imminent harm to an identifiable person or persons.</p> |
| <p>Part II, Section 3</p> | <p>Requires risk assessment tools to be reviewed and subject to validation every 5 (five) years.</p> | <p>Risk assessment tools should be revalidated annually.</p> | <p>Replace “every 5 (five) years” with “annually.”</p> |

| | | | |
|---|--|---|--|
| Part II, Section 3 | Requires intake service centers to make an inquiry into the individual's ability to afford bail. | The ability to pay inquiry should be based on self-reporting, as past tax returns do not speak to an individual's present ability to afford bail. There is currently no language establishing presumptions around an individual's inability to afford bail. There is no time limit on the inquiry into the individual's ability to pay. | Insert language stating that a court shall only consider a person's self-reported present ability to pay (within 24 hours). Further, there should be a presumption of inability to pay if a person receives state welfare aid. Money bail should not be set for minors. |
| Part II, Section 3, §353-10(b)(3) and §353-10(b)(9) | This provision seems to require intake service centers to conduct risk assessment tools for all arrestees. | This is labor-intensive and clogs up the system, preventing others from receiving timely assessments. Pretrial risk assessment tools have been shown to have racial bias . If risk assessment tools are to be used, there needs to be strict standards to ensure that the tool is free from racial bias. | Insert language to create a group of persons for whom there is mandatory release (e.g., traffic offenses, petty misdemeanors, and misdemeanors) and are excluded from being given a risk assessment. Language should also be inserted to provide that, as part of the validation, it should be specifically required that both the rate of accurate predictions and the rate of failed |

| | | | |
|---|--|---|---|
| | | | predictions be equal across racial groups. |
| Part II, Section 3, §353-10(b)(9) | Requires that judges receive the “executed risk assessment delineating the scored items, the total score, any administrative scoring overrides, and written explanations for administrative scoring overrides. | The adoption and use of risk assessment tools should be transparent. However, in individual cases, judges may be unduly prejudiced by tools that are not scientific and are based on the normative judgement of the tool developer. For example, someone who is high risk may only have a 20% chance of failing to appear, and when this is labeled as “high” it bears a connotation of severity that may not actually translate when people see the numbers. | Judges should not receive the score or the categorized risk output of a risk assessment (i.e., the “low,” “medium,” or “high” determination). Instead, they should just get the report and recommendation from pretrial services and listed substantiating information, but not the score, to assist in the decision. |
| Part III, Section 7 Part III, Section 10 Part V, Section 15 | Allows for liberty-restricting conditions of release. | These restrictions should be tailored to individual circumstances. Courts should not create a blanket requirement for individuals to pay for things like electronic | Insert language providing that all conditions of release should be individually tailored to the circumstances, and the least restrictive conditions necessary to mitigate the above-mentioned |

| | | | |
|---------------------|---|---|--|
| | | monitoring as a condition of their release. | risks. Further, liberty-restricting conditions such as no contact orders, geographic restrictions, curfews, GPS monitoring, house arrest and other restrictions on travel/movement should be only after a finding by a judge based on clear and convincing evidence and as a last resort if it is the least restrictive condition or set of conditions. Language restricting an individual's association is invalid and should be stricken from statute. |
| Part III, Section 5 | Requires an individual's release on their own recognizance for certain offenses with exemptions. Creates a rebuttable presumption of release on one's own recognizance, but grants broad exemptions to the presumption. | The carve-outs in this provision are not linked to the purpose of bail, which is to guarantee appearance in court. The exemptions are linked to offense, rather than individualized risk of flight or threat of imminent harm to an identifiable person or persons. These carve-outs essentially <i>assume</i> the person arrested will be convicted, | These carve-outs should be eliminated. |

| | | | |
|----------------------|--|---|--|
| | | which is backwards from “innocent until proven guilty.” | |
| Part III, Section 11 | Amends HRS §804-9 to clarify that bail shall be set in a reasonable amount considering 1) the offense alleged, the possible punishment upon conviction, and the “offender’s” ability to afford bail. | The amount of bail should be set based on the accused individual’s ability to afford bail. If bail is unaffordable, then it is useless. | The relevant language in Part V, Section 11 should be amended to read: “. . .and shall be set in a reasonable amount based upon all available information, including the offense alleged, the possible punishment upon conviction, and the offender’s <u>accused individual’s</u> financial ability to afford bail.” |
| Part V, Section 15 | Maintains statutory requirement/allowance that bail be revoked if an individual does not meet their conditions of release. | There should be due process prior to revocation of bail and imprisonment. Detention should not be the default outcome. | Insert language clarifying that a due process hearing is required prior to the revocation of bail and imprisonment. Courts should consider the least restrictive conditions that may be more appropriate for release. |

Thank you for the opportunity to testify.

Sincerely,

Monica Espitia
 Smart Justice Campaign Director
 ACLU of Hawai‘i

LATE

SB-192-HD-2

Submitted on: 3/29/2019 10:10:18 AM

Testimony for FIN on 3/29/2019 3:30:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|----------------|--------------|--------------------|--------------------|
| Marissa Pettus | Individual | Support | No |

Comments:

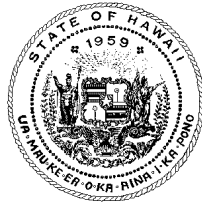
I strongly **SUPPORT** SB192, SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly.

I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families.

I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system.

For these reasons, I humbly request that you **PASS** SB192, SD1,HD2 out of your committee.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

1164 Bishop Street, Suite 1530
Honolulu, Hawai'i 96813
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MARI McCAIG
Chair

MARTHA ROSS
Commissioner

SANDRA JOY EASTLACK
Commissioner

PAMELA FERGUSON-BREY
Executive Director

LATE

TESTIMONY ON SB 192 SD1 HD2
RELATING TO BAIL

by

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Friday, March 29, 2019, 3:30 PM
State Capitol, Conference Room 308

Good afternoon Chair Luke, Vice Chair Cullen, and the House Committee on Finance. Thank you for providing the Crime Victim Compensation Commission (the "Commission") with the opportunity to provide comments on Senate Bill 192 SD 1 HD 2. This bill seeks to implement recommendations of the Criminal Pretrial Task Force ("Task Force"). The Commission is currently working with other victim service providers on draft language to address Task Force recommendations that jeopardize victim and community safety.

PRE-TRIAL BAIL REFORM

The Commission supports pre-trial bail reform that results in equity - - no one should be kept in custody solely because they cannot afford to pay bail, and inefficiencies and the failure to set timely bail hearings should not result in the continued detention of inmates who would otherwise be released.

While the Commission supports bail reform provisions that are consistent with this intent, the crime victim service community has identified several provisions in the various Task Force bills that do not move this effort forward, and, instead, will negatively impact crime victim and community safety. Paramount among our concerns are the provisions that: 1) allow pretrial defendants to cross-examine crime victims during the bail process; 2) create a rebuttable presumption that defendants charged with certain crimes will be released (including burglary and gun control laws); and 3) allow for the release of a defendant who represents a danger to the person they victimized – there is no validated danger assessment tool and insufficient time is provided to make this determination. The Commission is working with other victim service organizations to draft language to address these concerns.

Thank you for providing the Commission with the opportunity to testify on Senate Bill 192 SD1 HD2.

From: Dora Aio-Leamons <doraikola@gmail.com>
Sent: Friday, March 29, 2019 12:01 PM
To: FINtestimony
Subject: I Strongly Support SB192 SD1 HD2 Relating to Bail

LATE

I strongly SUPPORT SB192 SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly. I specifically support Section 5 of this measure, which contains the unsecured bail proposal originally in this bill. This system would offer judges an additional tool that does not penalize poor defendants simply because they cannot afford bail. If passed, this would allow judges discretion to offer poor defendants who cannot afford to post bail an unsecured bail option. This means that by signing a promissory note and committing to attend their trial, an indigent defendant could be released on bail without having to pay cash up front. Data has shown that unsecured bail is just as effective as traditional cash bail at ensuring defendants' court appearances and maintaining public safety, but that it does much better at freeing up jail space. Under this system, judges would still have the option to deny bail, as they do now, to those defendants who pose a greater flight risk or those that pose a threat to public safety. This measure merely gives judges an additional option that could prevent unnecessary harmful impacts on indigent families. I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system. For these reasons, I humbly request that you PASS SB192 SD1, HD2 out of your committee.

From: Elizabeth Cuccia <liz@cainandherren.com>
Sent: Friday, March 29, 2019 12:30 PM
To: FINtestimony
Subject: SUPPORT SB192, SD1, HD2

LATE

I strongly **SUPPORT** SB192, SD1, HD2 because it would create a more fair and equitable bail process. Overwhelming nationwide data shows that pre-trial cash bail disproportionately impacts poor defendants and is a major factor in overcrowding of detention facilities. While the bail system is intended to allow for the release of accused individuals while they await a fair trial, it often punishes the poor who cannot afford to post bail. Remaining in jail for months or even years awaiting trial has become the norm for many poor defendants. This has many detrimental impacts on those defendants and their families. Another by-product of this flawed process is overcrowding of Hawai'i's jails, which ends up costing Hawai'i taxpayers significantly.

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I also support the current draft of this measure, generally. Sections 1-4 and 6-22 include broad bail reform recommendations made by the HCR134 Task Force. I echo community calls for a more efficient, effective, and just bail system, and support efforts like these to reduce our reliance on the harmful cash bail system.

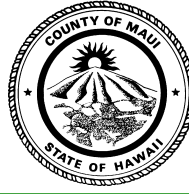
For these reasons, I humbly request that you **PASS** SB192, SD1, HD2 out of your committee.

Elizabeth S. Cuccia, Esq.
Cain & Herren, ALC
The Attorneys with Heart
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LATE

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COUNTY OF MAUI
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TESTIMONY
ON
S.B. 192, S.D. 1, H.D. 2 - RELATING TO BAIL

March 29, 2019

The Honorable Sylvia Luke
Chair
The Honorable Ty J. K. Cullen
Vice Chair
and Members of the Committee on Finance

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments concerning S.B. 192, S. D. 1, H.D. 2, Relating to Bail. Based upon our concerns regarding the bill's current language, we respectfully request that this bill be deferred so that the current language can be further reviewed and amended as necessary.

One of our concerns is that the language in Section 5 ("Unsecured Bail") appears to be unnecessary in its current form. This section grants the court the discretion to allow a defendant to be released upon execution of an "unsecured financial bond" for all or part of the bail amount, assuming a sufficient showing of significant financial hardship and other difficulties stemming from incarceration. However, current law already allows a court to reduce the bail amount or release a defendant, subject to appropriate conditions, on their own recognizance without requiring a surety. These current mechanisms appear to have the same result as the execution of an unsecured financial bond.

We are also concerned about the additional requirement that a defendant's release on bail be under "the least restrictive conditions required to ensure the defendant's appearance and to protect the public". This phrasing make it unclear whether a court will be able to order reasonable conditions of release at all, and under what circumstances it will be allowed to do so.

Based on the foregoing, we respectfully request that this bill be deferred. Thank you very much for the opportunity to provide testimony on this bill.